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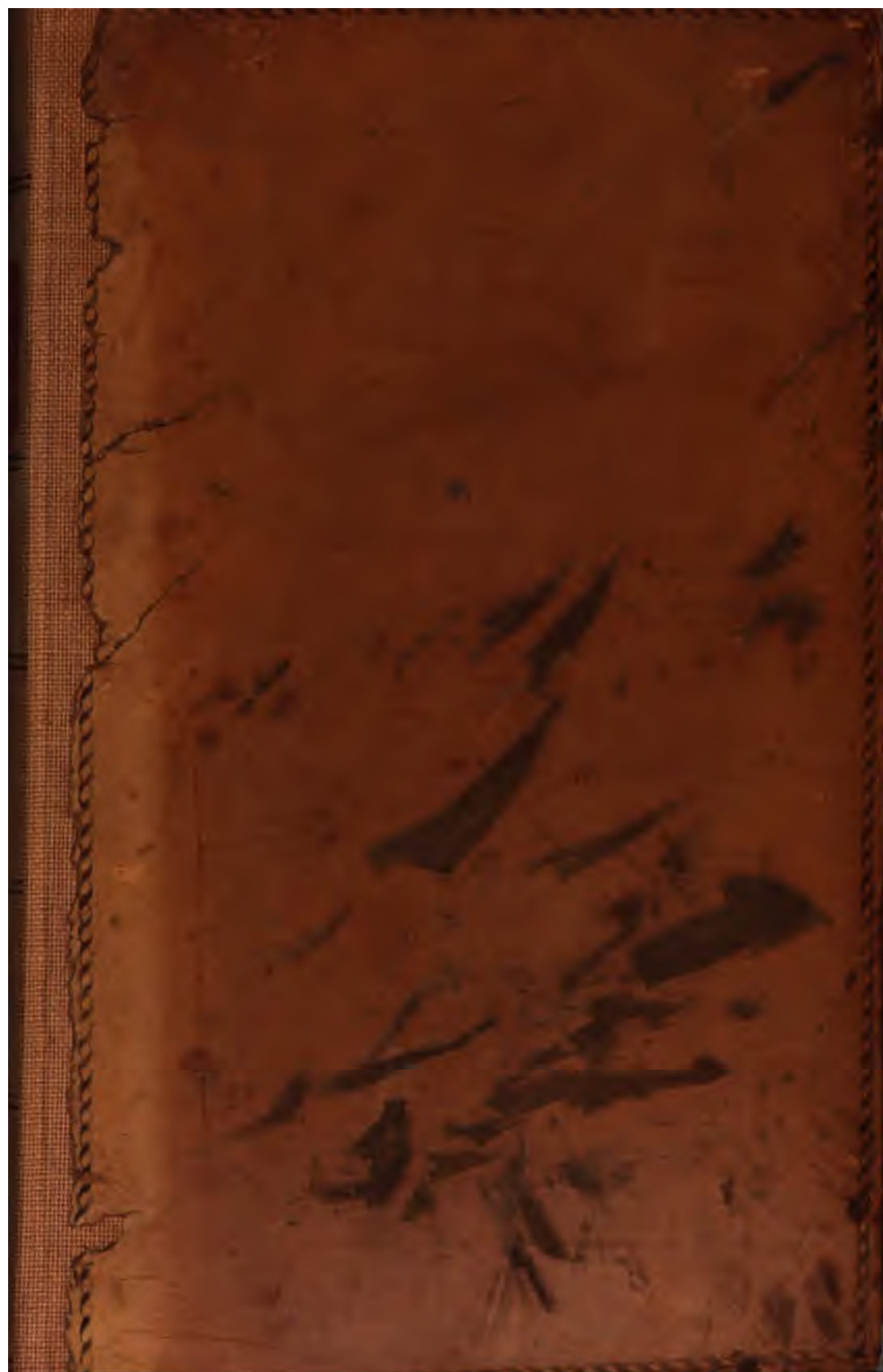
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A
Practical Guide
TO
THE QUARTER SESSIONS,
AND OTHER
SESSIONS OF THE PEACE,
ADAPTED TO THE USE OF
YOUNG MAGISTRATES, AND PROFESSIONAL
GENTLEMEN,
AT THE
COMMENCEMENT OF THEIR PRACTICE.

—◆—
THE SECOND EDITION,
Corrected, and much enlarged by the Addition of New Matter, and
by numerous Precedents of Indictments, Convictions, &c. &c.

—◆—
BY
WILLIAM DICKINSON, Esq.
BARRISTER AT LAW,
AND ONE OF HIS MAJESTY'S JUSTICES OF THE PEACE,
AUTHOR OF "A PRACTICAL EXPOSITION OF THE OFFICE AND DUTIES OF A
JUSTICE OF THE PEACE," AND OTHER WORKS.

=====
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1820.



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P R E F A C E

TO THE .

SECOND EDITION.

THE former edition of this work, as was observed in its preface, was not gratuitously obtruded on the Publick by its Author; having been originally compiled for personal service *only*, and published at the instigation of some of his Fellow Labourers in Commissions of the Peace, at a distance from the metropolis; who concurred in complaining that they were too dependent on their respective Clerks of the Peace for information sufficient to execute, with tolerable facility, the ordinary duties of Justices in Session. To comply with this their requisition, and to relieve other persons similarly circumstanced from an undignified embarrassment, was the principal, if not the only, object he had in contemplation. For the due execution of this limited purpose, he then restricted his observations to little more than elementary instruction; and if the rapid sale of a considerable edition, in a very short period of time, be any criterion, whereby to judge of the utility of such a work, he has every reason for being well satisfied, so far, at least, as respects the design.

He cannot, however, conceal from himself, nor does he wish to conceal from the Publick, that several persons of professional distinction, (doubtless from having formed expectations of finding in his work much more than he in-

tended, or his advertisement indicated) have been disappointed in his *execution* of that design.

In conformity with their admonitions, it is, that he now trespasses on the public attention with another edition; in which he has endeavoured, in a certain degree, to fulfil their expectations, by the admission of much additional matter, so arranged, as, without superseding his *original* purpose, to compose a sort of compendium of Sessions' Law, as well as of Practice; which he trusts may present something useful to *every description* of persons, whose pursuits, or duties, may invite them to attend upon Courts of Sessions of the Peace.

He feels it, however, again necessary to give a caution against any misapprehension of the purpose of his book, even in its enlarged form; by observing, that it by no means aspires to the distinction of superseding more voluminous works on the same, or similar, subjects: that he scarcely presumes to expect for it a place on the shelf of a Lawyer's library; its legitimate office, and true design, being merely that of a compendious digest, a sort of manual, or *vade mecum*; principally adapted to momentary reference, during the immediate pressure of forensic discussions in the business of a Session; or, at most, for usual consultation by Country Practitioners at a distance from the great source of voluminous information, the Metropolis.

In the prosecution of this design, it has been suggested to him, by several gentlemen of the first consideration in *Sessions' Practice*, that a good selection of approved precedents, respectively applicable to the diversified occasions of Courts of Session, would be eminently serviceable. Of this suggestion he has availed himself, by the introduction of forms adapted to most of the ordinary occurrences in country practice.

Perhaps he may not be considered guilty of presumption in supposing, that he has even improved upon the intimation thus conveyed to him, by having, to many approved precedents, subjoined notes, explanatory, or illustrative, as the subject, and occasion, called for them respectively ; beside which, with a view of more clearly distinguishing any common errors and defects in drawing up those continual subjects of controversy, summary convictions, he has introduced some faulty precedents of those particular instruments, which have been from time to time quashed ; pointing out, at the same view, in what respects they were defective, and by what alterations, or additions, the errors might have been avoided.

A few words on another subject, viz. the arrangement of the matter, may be allowed, in conclusion. Since the statute 59 Geo. 3. c. 28. giving authority to Courts of Quarter Session to divide themselves into two courts, it has been usual to separate that part of the business which requires the intervention of a jury, from that which is entrusted to a differently constituted tribunal. In conformity with this distinction of the business of the Court, has been that of the arrangements of the matter in these pages. Four chapters contain all which relates to the former of these divisions ; the fifth and sixth, to that which appertains to the latter. If convenience should, therefore, suggest a separation of the work into two small volumes, in preference to one of large size, such separation may easily be made at page 486, the conclusion of the fourth chapter.

Jan. 1, 1820.

The Compiler might not unnecessarily offer many apologies for the typographical errors in the following pages, but one is sufficient, viz. his own impaired organs of vision. Except the following, however, numerous as they may be on the whole, they are obvious and inconsiderable; being chiefly in orthography and punctuation, every reader's discernment will readily enable him to correct them as he proceeds. The following are of a more important description, and require correction with a pen, because on their being so corrected the sense of the passages, wherever they occur respectively, must depend.

ERRATA.

Page Line

- 1, last but one, *for of, read or.*
- 14, 27, *for distinctions, read descriptions.*
- 73, 23, *for there give evidence, read there prosecute the same and give evidence.*
- 100, 5, *for this read, their.*
- 106, 20, *for and, read with.*
- 107, 14 of note, *for Burnwell and Aldmon, read Barnwell and Alderson.*
- 135, 33, *for remuneration, read enumeration.*
- 138, 24, *for treasure here, read treasure-trove.*
- 139, 12 and 15, *for animus, read animo.*
- 165, last line, *for Sedy, read Sadi.*
- 188, 12, *for venire, read venue.*
- 240, penultima, *for as, read is.*
- 265, 2 of note, *for no such cash, read no cash.*
- 269, 4, *for objects of them, read alms of them.*
- 307, 9 of note, *for is 21, read the 21.*
- 309, 7 of note, *for their transportation, read the transportation.*
- 352, last of note, *for subject indictable, read subject, and indictable.*
- 370, 4 of note, *for is to, read as to.*
- 472, 5, *for assayed, read essayed.*
- 522, 3, *for in security, read in severalty.*
- 547, last, *for was the two next cases. read was the next case.*
- 548, first, *for also of a, read also one of a.*
- 640, 28, *for mucture, read multure.*
- 721, 10, *for some one, read some, or one.*
- 744, 2 of note, *for but the distinct, read but two distinct.*

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A

PRACTICAL GUIDE,

&c. &c. &c.,

CHAPTER I.

THE SESSIONS OF THE PEACE.

Of the different Descriptions of Sessions.—Their Constitution and Continuance.—The Manner of convening them.—The Time and Place of holding them.—Forms of the Precepts to the Sheriff.—Of the Sheriff's Warrant to the Bailiffs.—Style of the Sessions, &c.

THE term "*Session of the Peace*" is used to designate Sessions what. "a Sitting of Justices of the Peace, for the execution of those purposes which are confided to them by their commission, and by divers acts of parliament." The words "of the Peace" are added to distinguish *these* Sessions from all others, of which there are many kinds; as *ex. gr.* Sessions of Parliament, Great Sessions of Wales, Court of Session in Scotland, Session of Weights and Measures in London, and others.

Sessions of the Peace may be for jurisdictions of greater, Extent of jurisdiction. or of less extent, according to the pleasure of the Crown.

The King may grant a commission of the peace for a county, and under such commission the jurisdiction of the justices named in it will extend over the whole of such county; or he may grant it for any particular district of portion of a county, exclusive of the jurisdiction of the justices of the county at large; or he may by charter give the power of acting as justices to certain officers in towns

corporate, cities, and other places. In the latter cases, however, the justices of the county at large, in which such district, town corporate, city, or other place, shall happen to be situate, can only be prohibited from interfering by special words in the commission or charter of the inferior jurisdiction, called technically "a *non intromittant* clause." *

In most cities and corporate towns there are Sessions held before justices of their own, whether the county justices be excluded, or not; and such Sessions have authority exactly similar to the Sessions of a county, except in a very few instances; one of the most considerable of which is in appeals from orders of removal of the poor, which, though made by the justices of the city or corporation, must be carried by *appeal* before the justices of the county by 8 & 9 Will. 3. c. 30.

Sessions are of four kinds or descriptions: *Petit*, or, as they are usually denominated, *Petty*, *Special*, *General*, and *General Quarterly*.

Petty Sessions. PETTY SESSIONS are when two, or more, justices of the peace, of their own mere motion, meet together, to transact such business, as, either by the positive direction of their commissions, or by statute, requires the presence of more than one; or when it is of such difficulty or importance, that its circumstances point out the necessity, or the propriety, of such a concurrence. Any laboured attempt to illustrate this position, in any of its parts, by an enumeration of instances in which the presence of two justices may be requisite, convenient, or decorous, would be nearly impracticable; and, if imperfect, might tend to mislead, by inducing justices to overlook other cases that were omitted, to whatever cause such omission might be attributable. With this exposition of *principle*, it may perhaps be sufficient for *practice*, if notice be taken of the most prominent and ordinary occasions, on which the presence of two justices in Petty Session is required by law. On others; viz. such as are out of the ordinary routine of duty, where the authority of justices is only to be called into exercise on questions of rare occurrence, of scru-

When necessary.

pulous investigation, or of nice interpretation, it is more than probable that recourse must be had to the statutes themselves, which confer the jurisdiction, for *other* purposes, as well as for the number of justices empowered to act upon the subject.

The most prominent and ordinary occasions, then, on which the presence of two justices (not in Special, General, or Quarterly, but) in *Petty Session*, properly so called, is required, seem to be the following, they being generally for judicial, and not for merely ministerial acts.*

ALEHOUSES.

Adjudication of forfeiture of licence to, by 57 Geo. 3. c. 19. s. 29.

APPRENTICES. *

Binding poor, by 48 Eliz. c. 2.

Assigning ditto, by 32 Geo. 3. c. 57.

Discharging ditto, ditto.

Registering ditto, by 42 Geo. 3. c. 46.

Binding to the sea service ditto, by 2 & 3 Anne, c. 6.

Levying penalties on masters misbehaving to ditto, ditto.

Discharging apprentices generally, by 20 Geo. 2. c. 19.

Recompensing parish apprentices discharged, for ill usage by masters, by 32 Geo. 3. c. 57.

Punishing masters of apprentices generally, with whom no more than a fee of 10*l.* was paid, by 38 Geo. 3. c. 55.

BASTARDY.

Order of maintenance of a bastard child upon the reputed father and the mother, by 18 Eliz. c. 3; and 49 Geo. 3. c. 68.

Certificate to session that such order hath been made, by 49 Geo. 3. c. 68.

Summons, and commitment, of father or mother for disobedience of the order, by 49 Geo. 3. c. 68.

* *Rex v. Hempstall.* 3 T. R. 390.

SESSIONS OF THE PEACE.

BREAD.

Setting the assize of, in counties, not being cities, towns corporate, or boroughs, by 31 Geo. 2. c. 29.

BRIDGES.

Authorizing the getting stones and other materials for the repairing of county bridges, by 55 Geo. 3. c. 147.

BURNING.

Commitment of servant for burning a house by negligence, by 6 Anne, c. 31.

BUTTONS.

Conviction of a manufacturer of buttons for putting a false mark on them, by 36 Geo. 3. c. 60.

CARRIERS.

Warrant of distress for levying penalty on carrier for having exceeded the rates of carriage, when such rates have been set, by 3 W. 3. c. 12; and 21 Geo. 2. c. 28.

CHURCH RATES.

Order for payment of, to the amount of 10*l.* by 7 & 8 W. 3. c. 6; and 52 Geo. 3. c. 127.

CONSTABLES AND OTHER PARISH OFFICERS.

Conviction of, fine upon, and distress against, for neglect of duty, by 33 Geo. 3. c. 55.

COTTON AND WOOLLEN MILLS AND FACTORIES.

Conviction and punishment of masters and mistresses of, for offences described by 42 Geo. 3. c. 73; and 59 Geo. 3. c. 66.

DELIVERING POSSESSION OF PREMISES.

Putting owner into possession of, by 11 Geo. 2. c. 19; and 57 Geo. 2. c. 52.

Putting churchwardens and overseers into possession of,

when appropriated to the use of the poor, by 59 Geo. 3. c. 12.

DISTRESS.

Conviction of fraudulently removing goods to avoid, and for assisting in the same, by 11 Geo. 2. c. 19.

DOGS.

Conviction and commitment for stealing, by 10 Geo. 3. c. 18.

EXCISE AND CUSTOMS.

Informations and convictions under most of the laws relative to the excise and customs, especially by 12 Car. 2. c. 24; 18 Geo. 2. c. 26; 24 Geo. 2. c. 48; 5 Geo. 3. c. 43; and 24 Geo. 3. c. 47.

FIRE ARMS.

Conviction of undue making, marking, or proving of, by 53 Geo 3. c. 115; and 55 Geo. 3. c. 59.

FRIENDLY SOCIETIES.

Informations, orders, and warrants respecting the government of, by 33 Geo. 3. c. 54; 35 Geo. 3. c. 101; 49 Geo. 3. c. 125; and 59 Geo. 3. c. 128.

HIGHWAYS.

Enforcement of rates for, composition for, and discharge from rates for, by 13 Geo. 3. c. 78; and 34 Geo. 3. c. 64.

N.B. The other acts to be performed by justices, by authority of the different statutes relative to highways, are directed to be at *Special*, not at *Petty*, Sessions; excepting the convictions for offences on them, which are generally sufficient before a single justice.

LUNATICS.

Commitments of, to safe custody of parish officers, by 17 Geo. 2. c. 5.
To lunatic asylums, by 48 Geo. 3. c. 96; and 59 Geo. 3. c. 197.

PLAYERS.

Convictions of, in pecuniary penalties, for playing contrary to provision of 28 Geo. 3. c. 30.

POOR.

Order of removal of, and suspension of ditto, by 13 & 14 Car. 2. c. 12; and 35 Geo. 3. c. 101.

Rate for relief of, enforcing, by 43 Eliz. c. 2.

N. B. The allowance of the rate is merely a ministerial rate. See *ante* p. 3. in note.

Examination and punishment of overseers of, for negligence, &c. by 43 Eliz. c. 2.

Of ditto, for disobedience of a lawful warrant, or neglect of duty, by 33 Geo. 3. c. 55.

Relief of, by parents, overseers, &c. by 59 Geo. 3. c. 12.

Assignment of pensions of, by ditto.

SERVANTS.

Disputes with their masters; settling

In the silk trade, by 32 Geo. 3. c. 44.

In the cloth trade, by 13 Geo. 3. c. 40; and 29 Geo. 2. c. 33.

In the hat, fur, hemp, flax, and mohair trades, by 12 Geo. 1. c. 34; 22 Geo. 2. c. 27; and 17 Geo. 3. c. 55.

In the leather manufacture, by 13 Geo. 2. c. 8.

In the iron, cotton, &c. ditto, by ditto.

Conviction of, for combining to advance wages, by 39 & 40 Geo. 3. c. 106.

Relief of, by enforcing payment of wages to, in money, by 57 Geo. 3. c. 115 and 122; and 58 Geo. 3. c. 51.

VAGRANTS.

Conviction of, for wilfully neglecting to provide for their wives and families, by 32 Geo. 3. c. 45.

WEIGHTS AND MEASURES.

Appointment of inspectors of, by 35 Geo. 3. c. 102; and 55 Geo. 3. c. 43.

WOOL.

Conviction of persons exporting, by 9 & 10 W. 3. c. 246;
and 28 Geo. 3. c. 38.

WRECK.

Estimating value of articles saved from, by 53 Geo. 3. c. 87.
Ascertaining damages done to contiguous lands by removing goods from, by ditto.

Under the second division of the position that has been laid down, *viz.* that part which relates to instances wherein discretion would point out the propriety of having the assistance of a second justice for the benefit of *deliberation*, although positive statute may not require the authority of more than one for *execution*, little need be advanced. Common prudence and delicacy will suggest to every man of discernment the cases, as they arise, in which he ought to wish only to *share* responsibility. It is even almost unnecessary to throw out generally, as examples, such cases as concern large pecuniary interests, or persons of eminent station in society; questions on statutes that admit of some ambiguity of interpretation; as well as those where no remedial process of any description is given from the summary decision of the justice who takes cognizance of the subject, by application to any other tribunal.

SPECIAL SESSIONS are *extraordinary* meetings of justices convened by some *proper authority*, for some *special purpose*. What must be that authority, and of what description are those purposes, become necessary subjects of consideration. Some Special Sessions are periodical, some only occasional, although both by statute. Of the former kind are those directed to be holden at particular seasons for the appointment of overseers of the poor, and of highways, as also for the licensing of alehouses. Of the latter, are those for turning and improving highways by 13 Geo. 3. c. 78. and 55 Geo. 3. c. 68; those under the general inclosure act of 41 Geo. 3. c. 109; and those under the 22 Geo. 3. c. 38. for erecting houses of industry; and many others. The form and manner of convening these, and all other Special

Sessions, which are directed by statute, must of course be in conformity with the directions of the statutes themselves respectively, where any such directory words occur, and are indeed generally by precept under the hands and seals of *two justices* of the county, division, riding, or liberty: but Special Sessions, in the ordinary acceptation of that expression, which are not directed by any particular statute for any particular or specific purpose; or which, being directed for a specific purpose, are not directed to be convened after any specific manner, may be convened by the *custos rotulorum* of the county, division, &c.; by the clerk of the peace of such county, division, &c. as the deputy of such *custos rotulorum*; or by any *one*, or more, justice, or justices, of the county, division, &c.*

The immediate instrument by which a *periodical* Special Session is convened, is a precept addressed to the chief constables, for the county, division, riding, or liberty, in, and for, which the Special Session is about to be assembled, and is usually according to one of the following, or the like forms, varied according to the special purpose for which it is issued.

PRECEPT FOR SUMMONING A SPECIAL SESSION FOR GRANTING
LICENCES TO ALEHOUSE-KEEPERS, VICTUALLERS, &c.

County of..... { To Gent. High Con-
(to wit). stable of the Hundred of
 in the County of.....

These are in his Majesty's name strictly to charge and command you, that you, together with the petty constables of the several towns, parishes, and hamlets within your division, taking sufficient assistance out of the said towns, parishes, and hamlets, do make a general privy search within every of the said towns,

* Lambard, indeed, observes, (p. 382,) and Dalton follows him in the remark, (p. 651,) that "Special Sessions should be convened by two justices, and not by the *custos rotulorum* alone." But it is manifest, from the context, that these observations are applied by them to Special Sessions directed by particular statutes, and to them only. Consistently with this interpretation, must be understood a previous passage in Lambard, (p. 380,) wherein he says, that "a Special Session holden without notice will be good." Even admitting that this doctrine be correct, (which *so applied* is by no means the case) as to

parishes, and hamlets, upon
 at night, for the finding out and apprehending of all rogues,
 vagrants, and wandering idle persons, in and about the said
 towns, parishes, and hamlets. And such as shall be found and
 apprehended, you do cause them to be brought before us the
 next day, which will be
 at in
 in the said county, by ten of the clock in the morning of the
 same day precisely, then and there to be dealt with according
 to law.

At which time and place we farther require you, together with the petty constables aforesaid, to appear before us, and then and there to give us an account in writing of what rogues, vagabonds, wandering, idle, and disorderly persons have been as well apprehended in the said search, as also since the last monthly meeting which was held for that purpose.

As also that you require the said several petty constables, that they do give notice to the several keepers of alehouses, inns, and victualling houses in their respective constaberies, and generally to all persons who do intend to offer themselves to be licensed to sell ale, wine, or spirituous liquors* to appear before the justices of the peace of our Lord the King, at the time and place before mentioned, then and there to be licensed; and also to give notice to all such persons, that they will be required personally to enter into recognizances respectively, in sums of ten pounds each, together with two sureties respectively, in the respective sums of five pounds each, that they will not use or suffer any unlawful game or games; and that they will keep good order and rule within their respective houses and other places; and that if any shall be hindered by sickness or other reasonable cause, to be allowed by the said justices then and there assembled, that he or she must procure two sureties, then and there to be bound in like manner, in ten pounds each; and further, to all persons who so intend to offer themselves to be licensed, who have not been already licensed for the preceding year, that no such licence will be granted to such person unless he shall, at the same time and place, produce a certificate under the hands of the minister and the major part of the churchwardens and overseers, or of the said minister and three or four of the respectable and substantial householders of

Special Sessions holden periodically by authority of any particular statute, for a purpose pointed out and defined by that statute, it is certainly erroneous if applied to a Session specially called for a special purpose, the only publication of that purpose being the notice itself.

* These additional words in italics were not used to be inserted; but since the determinations of the case of *R. v. Downes*, (3 T. R. 560,) and *R. v. Drake*, (3 Pract. Expos. 5) they seem to be necessary.

the place where he inhabiteth, setting forth that he is of good fame, and of sober life and conversation. Herein fail not.

Given under our hands and seals this day of 18

**PRECEPT FOR SUMMONING A SPECIAL SESSION FOR THE
APPOINTMENT OF SURVEYORS OF THE HIGHWAYS.**

County of..... { To Gent. High Con-
(to wit). stable of the Hundred of
 in the County of.....

We, two of his Majesty's justices of the peace in and for the said county, do hereby require you to direct your petty constables to make a general privy search within their several respective constablies, upon the day of next, at night, for the finding out and apprehending all rogues, vagrants, and wandering idle persons, in their said respective constablies, and such as they shall find apprehend on such search, to cause them to be brought before us the next day, which will be the day of next, at the in in the said county, by ten of the clock in the morning of the same day, then and there to be dealt with according to law.

And, in order to carry into execution the several statutes for the amendment and preservation of the public highways, you are hereby required forthwith to direct the said petty constables immediately to give public notice to the churchwardens, surveyors of the highways, and householders, being assessed to any parochial or public rate within their several liberties, that they do assemble on the day of instant, at the church or chapel; or if they have no church or chapel, then at the usual place of public meetings in their said liberties, at the hour of eleven in the forenoon: and that the major part of them so assembled do make a list of the names of at least ten persons living therein, who each of them have an estate in lands, tenements, or hereditaments, lying within the same, in their own right, or in the right of their wives, of the value of ten pounds by the year, or a personal estate of the value of one hundred pounds; or are occupiers or tenants of houses, lands, tenements, or hereditaments, of the yearly value of thirty pounds. And if there shall not be ten persons having such qualifications, then that they do insert in such list, the names of so many of such persons as are so qualified, together with the names of the most sufficient and able inhabitants not so qualified as shall make up the number ten, if so many can be found; if not, so many as shall be there resident, to serve the office of surveyor of the highways. And you are also required to direct them, within three days after making the said list, to deliver a copy thereof to one of the justices of the peace of the said county, living in

or near their said respective jurisdictions; and also give personal notice to, or cause notice in writing to be left at the place of abode of the several persons contained in such list, informing them of their being so named, to the intent that they may severally appear before the said justices at their Special Sessions, to be holden on the said..... day of..... next, at the hour of eleven in the forenoon, at the place above mentioned, to accept such office, if they shall be appointed thereto; or to shew cause, if they have any, against their being appointed. And you are likewise to direct your said petty constables to give notice to the present surveyors of the highways within your liberty, to appear at the same time and place, and produce such accounts and lists before the said justices as are required by law: and that they the said constables personally appear before the said justices, at their said Special Sessions, and then and there deliver to them the said original list taken as aforesaid, and give an account of the execution of the precept you shall issue forth to them.

Given under our hands and seals this day of 18

PRECEPT FOR SUMMONING A SPECIAL SESSION FOR THE
APPOINTMENT OF OVERSEERS OF THE POOR.

County of..... { To..... Gent.
(to wit). { Chief Constable of and for the Hundred
of.....
in the said County. Greeting.

These are in his Majesty's name strictly to charge and command you, that you, together with the petty constables of the several towns, parishes, and hamlets within your division, taking sufficient assistance out of the said towns, parishes, and hamlets, do make a general privy search within every of the said towns, parishes, and hamlets, upon
..... at night, for the finding out and apprehending of all rogues, vagrants, and wandering idle persons, in and about the said towns, parishes, and hamlets. And such as shall be found and apprehended, you do cause them to be brought before us the next day, which will be on
the day of..... at.....
in in the said county, by ten of the clock in the morning of the same day precisely, then and there to be dealt with according to law. At which time and place we farther require you, together with the petty constables aforesaid, to appear before us, and then and there do give us an account in writing of what rogues, vagabonds, wandering, idle, and disorderly persons have been as well apprehended in the said search, as also since the last monthly meeting which was held for that purpose.

And you are hereby likewise required to give due notice to all the petty constables within your said division, that they do

give notice to all the overseers of the poor within their respective constaberies, to make out a list in writing of a competent number of substantial housekeepers within their respective districts, qualified to serve as overseers of the poor, with which said list they are respectively to be, and appear, before us at the time and place above-mentioned, that out of the said list we may then and there nominate and appoint other overseers of the poor for the year then next ensuing. And you are commanded to give notice to the present overseers that they are required, on the said day of at in aforesaid, at eleven o'clock in the forenoon, to pass their accounts, and that in default thereof, they will be prosecuted as the law directs, and be you then there to certify what you shall have done in the premises.

Given under our hands and seals this day of 18

These, it will be observed, are for convening some of those Special Sessions, directed to be holden periodically for particular purposes, by authority of statute, and each of those purposes is specified in the respective precepts. In the instance of a Special Session being projected for any occasional extraordinary purpose, whether particularly contemplated by any statute, or not, and for convening of which no specific form is pointed out, it is even more necessary that the particular purpose for which it is to be holden should be inserted in the precepts to the chief constables, * as it is incumbent on them to give notices, (*i. e.* either by general or individual notice), to all the justices usually acting for the county, division, riding, or liberty, of *such* intended Session, and of the purposes for which it is convened. If these formalities be not strictly observed, however numerous the meeting of justices may happen to be, it will amount to no more than a Petty Session, and therefore will not satisfy the words of any statute, public or private, general or local, which requires the calling of a Special Session.†

* Lamb. 623.

† R. v. Croke, Cowp. 26.—By several general acts, some of which have been enumerated, as those respecting the turning highways, the erecting houses of industry, and inclosures, to which may be added the Insolvent Act of the 54 Geo. 3. certain matters appertaining to their execution are directed to be done at Special Sessions: many more examples of a similar kind might be selected from local acts of parliament for certain canals, embankments, &c. &c. Now it requires little discern-

The principle contained in this doctrine has received the most ample confirmation in a particular instance by the determination of the Court of B. R. in a recent case, Mich. 59 Geo. 3. Orders had been made for diverting a footway pursuant to 55 Geo. 3. c. 68. by two justices at a Special Session, holden on Tuesday, the 15th September, the *precept* for which had been issued by them to the high constable only *the preceding Saturday*, and the notices of which were given by such constable to the justices acting for, and residing within, the division in which the footway was situate, only *the preceding Monday*. After the order was made, the several notices prescribed by the act were duly given. At the subsequent Quarter Session, the order was returned to the clerk of the peace in open court, and application made that it might be confirmed and enrolled, there being no appeal against it. The Quarter Session refused to grant the motion, on the ground that *sufficient notice* of the *time and place* of holding the Special Session had not been given to the justices of the limits within which the footway was situate. A *mandamus* was moved for to compel the justices to confirm this order; and it was strongly contended in the argument in support of such motion, that a Special Session was merely a special sitting of justices, of which no notice is necessary.

The court, however, was unanimously of opinion that there were two questions in this case:—1st, Whether *any notice* was necessary; and, 2dly, Whether, supposing it to be so, *sufficient notice* was given in this case? The 55 Geo. 3. by the authority of which the justices proceeded in this case, recites the 13th Geo. 3. c. 78. and although it repeals a particular section of it, it incorporates many of

ment to discover, that to have left any judicial determinations, on some of these, or the like occasions, to the decision of a Petty Session, properly so called, (that is, to a meeting of any two justices who might be privately convened,) would have been, in many cases at least, to have made the *custos rotulorum*, or some other great landed proprietor, who had perhaps a pre-eminent interest in the subject to be decided, to all intents and purposes, (from the controuling influence he may reasonably be supposed to possess) the judge in his own cause.

its provisions, and enacts that the justices, by their order, may divert and turn the ways therein mentioned, "by such ways and means, and subject to such exceptions and conditions, in all respects, as are in the said recited act mentioned, with regard to highways to be diverted, &c." The statute thus referred to expressly provides, by the 62d section, that the justices may hold a Special Session for the purposes of that act, *causing notice to be given of the time and place of holding, &c. to the several justices acting and residing within the limits.* A notice then was necessary under the very words of the act; and if necessary, it must be reasonable notice, which this was not.*

The above cited case indeed only recognizes in terms the doctrine contended for, so far as it was applicable to the question immediately before the court, and there this construction of the law was provided for by the special words of the statute, out of which the transaction arose: but what is submitted here, is, that this statute only adopts the language, and fortifies the practice, (somewhat more specifically indeed,) of what was the law before; a law arising out of the nature, and absolutely necessary for the due performance, of the duty imposed; and that the same principle pervades the whole system of convening Special Sessions.

An unaccountable confusion has indeed prevailed in almost all writers on the subject of Sessions, respecting the distinction between *Special* and *Petty* Sessions. Barlow mentions but three distinctions of Sessions, viz: *Quarterly, General, and Special*; omitting altogether *Petty* Sessions. But he admits that Special Sessions are sessions *specially convened* to execute some *particular branch* of the authority of justices of the peace. Even so late as the *Commentaries* of Blackstone, scarcely any discrimination is made in treating of their respective duties, or even in the occasions for which they are summoned, or in the manner of summoning them, although there be a general recognition of the doctrine here insisted on, respecting their distinct and separate jurisdictions.†

* R. v. Worcestershire (Justices), 2 Barn and Ald. 278.

† 4 Black. Com. 273.

The place where such Special Session is to be holden, ^{Place to be} must also be specified in the notices; and this any of the ^{specified in} persons who have authority to convene them, have also ^{the precept.} the necessary authority to decide, so that it be a place within their jurisdiction. In this all the writers on the subject seem agreed. *

GENERAL SESSIONS.—These differ from *Special Sessions*, ^{General.} in as much as, although they are specially summoned, they are not for the execution of any *particular branch* of the justices' authority, or for any *particular business exclusively*, but for all general purposes for which Quarter Sessions are directed to be holden. If convened for any *special* purpose therefore, and *general* purposes are intended to be excluded, however custom may have sanctioned the miscalling them *General Sessions* in common parlance, they are in fact only *Special Sessions*. They differ from *Quarter Sessions*, inasmuch as they are not limited to any particular time, but are directed to be holden "so often as need be." †

They may be convened by the *custos rotulorum*, and any ^{How con-} one other of the justices; or by any *two* justices within the ^{vened.} jurisdiction, *one being of the quorum*, by precept to the sheriff to summon such Session, to return a jury, and give notice throughout his bailiwick to all persons whose duty it is to attend, for the *general* execution of their authority. ‡

And that the sheriff may have sufficient time to proclaim the sessions, to summon and return the several juries, and to warn all officers and others that have business there to attend;—the precept should bear *teste*, (or date) fifteen ^{Teste of the} days before the return, and ought forthwith to be delivered ^{precept.} to the sheriff. §

And if two such justices make a precept for a General Session of the Peace, all their fellow justices cannot discharge it by their *supersedeas*; nor can it be discharged, ^{How dis-} but by a *supersedeas* out of Chancery directed to the ^{charged.} sheriff. ¶

* Dalt. c. 185.—Lamb. 382, and 623.

† 2 Hen. 5. st. 1. c. 4.—Hawk. c. 8. ‡ Lamb. 382.—Hawk. c. 8.

§ 2 Shaw's Just. 174.

¶ Lamb. 375.—Crompt. 107.

Directions
in the Com-
mission for
the Precept.

But it is not sufficient for the convening a *General Session* of the Peace, that the precept run under the name of *one* justice only, even though it be that of the *custos rotulorum*, for the words of the *mandamus* clause in the Commission are "that *the sheriff* shall cause a *jury* to appear at such days and places, as the said justices, or *any two* or more of them, as *aforesaid*, shall appoint. *

Where there is
no precept.

It should appear that though there be no precept in writing to the sheriff, or an irregular precept, yet if a Session be actually holden, the proceedings had there will be good. No persons can be *compelled* to attend, if no precept be issued; but if they do in fact attend, and the duties of a Session be regularly performed, the irregularity in convening it is cured thereby. †

Where there
are two or
more precepts.

It has been doubted whether, if two or more sets of justices appoint two or more General Sessions, to be holden at the same time, any, or all, and which of them, are good. But such an event may happen without either mistake or misbehaviour in the justices; and there seems to be no reason why all such Sessions should not be legal and of equal authority.

Appearance, and service, at any one of them, would, indeed, in that case, operate as a discharge of service at the others. ‡ But the arguments that have been used to shew that such duplicates of Sessions would themselves be illegal, have been drawn from a supposed analogy to the

* Lamb. 377. This furnishes a further illustration of the reason why the authority for summoning a Special Session need not be the same as that required for summoning a General Session; viz., that in the former case no precept goes to the sheriff, because no jury is to be summoned, but only to the chief constable to summon the parties and such other persons immediately connected with their jurisdiction, the presence of whom may be required. In the latter the precept is directed to be sent to the sheriff, by the same instrument which confers on the justice the authority of a court of criminal jurisdiction, and which renders a jury, and all the other appendages of such a tribunal, imperatively necessary.

† 2 Ld. Raym. 1238.

‡ Com. Dig. tit. Just.

cases of *Special Sessions*, and those too directed by statute, which do not apply.*

But if such precepts were multiplied wantonly or for sinister purposes, the Justices issuing them would subject themselves to be punished by information in B. R. or by having their commissions superseded by the Lord Chancellor.†

Precepts issued from improper motives.

GENERAL QUARTER SESSIONS, are such Sessions as Quarterly. are regularly holden every quarter of a year, under the authority of statute.

The 12 Rich. 2. c. 10. directs, that "the justices shall keep their Sessions in every quarter of the year at least, and by three days, if need be, on pain of being punished according to the discretion of the king's council, at the suit of every man that will complain." By 12 Rich. 2.

And by 2 Hen. 5. st. 1. c. 4. the particular time in every quarter of a year shall be as follows; "to wit, in the first week after the feast of St. Michael, in the first week after the Epiphany, in the first week after the clause of Easter; and in the first week after the translation of St. Thomas the Martyr (Thomas a Becket), and more often if need be." Quarters designated by 2 Hen. 5.

A recent statute, ‡ however, after reciting that it would contribute to the convenience of those who have to attend them, if the time of holding the Michaelmas Quarter Sessions were altered, directs that for the future "all Quarter Sessions for the Michaelmas Quarter shall in every year be holden, for every county, riding, division, city, borough and place, within England and Wales, and for Berwick-upon-Tweed, in the first week after the seventh day of October, instead of at the time now appointed for holding the same; and that all acts, matters and things, done, performed and transacted, at the time appointed by this act for holding the said Michaelmas Quarter Sessions, shall be as valid and binding, to all intents and purposes, as if the same had been done, performed, and transacted, at the time heretofore appointed for the holding of such Sessions."

* 4 Term Rep. 451. † Dalt. c. 185. ‡ 54 Geo. 3. c. 84.

But London and Middlesex are excluded from the operations of the stat. by sect. 2.*

Variations
from the general
rule.

If the feast day fall on Sunday, the Sessions shall be holden in the week following, and not the same week. †

But in point of fact, the Quarter Sessions are variously holden in several counties, some on one day, some on another; and they are all equally good, for the stat. of Hen. 5. is only directory, and in the affirmative, and, therefore, if they be only holden according to the general directions of the stat. of Rich. 2. they will be valid. ‡

In Middlesex.

In Middlesex it is provided by statute specially, that Sessions shall be holden twice in the year at least, and oftener if need be; §—and in fact, from the necessity of the case, they are actually holden eight times in the year. ||

Jurisdiction
and authority
of the Court of
General Quar-
ter Sessions.

The jurisdiction and authority of the Court of General Quarter Sessions makes the subject of a separate chapter hereafter, and, therefore, it is sufficient here merely to

* The Sessions for the county of Middlesex, and those in the cities of London and Westminster, are governed by regulations in many respects differing from those which prevail in other parts of the kingdom. Besides an obsolete stat. of Hen. 6. (to be hereinafter noticed respecting the limitation as to number of Sessions to be holden annually for the county of Middlesex), it is to be observed, that, in point of fact, there are four *General Sessions* as well as four *General Quarter Sessions* holden periodically; but the latter are not holden precisely at the same time as in other counties, but as near thereto as convenient; and the former as nearly as possible to the middle of the intervening periods; but both have equal jurisdiction to take and try indictments, except in cases specially provided against by statute (2 Black. Rep. 1051). In Middlesex also the justices have a Commission of Oyer and Terminer. Although the city and liberty of Westminster have a separate Commission from the county of Middlesex, yet indictments for offences committed within such city and liberty, are within the cognizance of the Session of the Peace for the county of Middlesex; and if a party be bound by recognizance to prefer a bill of indictment, and prosecute for an offence at the next Session of the Peace, to be holden for the city and liberty of Westminster, and such party so bound do in fact prefer a bill for the offence at the next Session for the county of Middlesex, it is holden to be in compliance with the terms of the recognizance.

† 2 Hale 49.

‡ Id. 50.

§ 14 Hen. 6. c. 4.

|| 2 Hale, 49, 50.—2 Black. R. 1051.

observe, that by 34 Edw. 3. c. 1. it extends to the trying and determining all felonies and trespasses whatsoever. This general power however, is to be understood with limitation, especially, that it does not extend to the trial of new offences erected by act of parliament, unless the particular statute which makes or declares the offence, gives the cognizance of it to the justices in session,* either directly, or by necessary inference.

The subjects which have been made especially cognizable in this way, are, *generally*, such as relate to apprentices, the game, highways, publicans, the settlement and provision of the poor, servants, and vagrants.

If it happen on the day appointed for holding the Session, that a sufficient number of justices (two, one ^{whereof is of the quorum} ^{Justices not appearing.}) do not appear, it is usual to suffer the Session for that quarter to be lost. But if public convenience require it, a precept may be issued to the sheriff to convene a Session under the hands and seals of two justices, one being of the quorum, and to return a jury; and if such Session be *within that quarter*, that is to say, previous to the day for the *succeeding* quarterly Session pointed out by the stat. of Hen. 5. it will be a good Quarter Session, for that quarter in which the previous Session was lost.†

This point may occasionally be of considerable importance; because, although for many purposes a *General Session*

* Salk. 406.—Ld. Raym. 1144.

† 2 Hawk. c. 8.—But though the stat. of Hen. 5. as has been already observed, after directing the specific periods at which the four Quarter Sessions shall be holden, proceed to say, that they shall be holden “*oftener if need be*,” it does not mean to direct that more than one *original Quarter Session* shall be within one quarter; but merely that, after being summoned and *actually holden*, if the occasions of the county, or other district, require it, *that Session* shall be adjourned from time to time, as such occasion may render convenient, and that these adjournments are what the words “*or oftener if need be*” refer to. This decision does not interfere with what has just been laid down, viz. that if, for any cause, the first summoned regular Quarter Session be *not actually holden*, another original Quarter Session may be summoned *within that Quarter*, which will be good, as well as any adjourn-

might be sufficient, where any act is directed to be done at a **GENERAL QUARTER Session**, the formalities incident to that particular species of Session may be necessary to be observed. This case may not unfrequently happen respecting appeals given by divers statutes, which are generally directed to be to the next *Quarter Sessions* of the Peace. In such case a *General Session*, which was not also a *Quarter Session*, could not entertain them.*

Continuance
for more than
one day.

Orders may be
altered.

Business not
concluded.

Whenever holden, the whole Session, although it may continue two, or more, days, is, in point of law, considered as of one day. Hence it follows that the justices may change their opinions at any time while such Session continues, and may alter their orders. †

But if, from the justices being equally divided, or other cause, no conclusion be come to, and no adjournment take place, no order on any thing that may have come before them, can be made at a *subsequent Sessions*. ‡

ments of it. Under this explanation, the following cases are compatible with the doctrine laid down by Hawkins, and lead to the conclusions here drawn.

Hil. Term. 20 Geo. 2. appeal was made to the *Quarter Session*, held April 7, against an order of removal. The Session was adjourned to April 9, when for want of a sufficient number of justices nothing was done. April 11th, a Session was held, and adjourned to the 14th, when the appeal was allowed. It was moved to quash the order of Session, as made without jurisdiction, the Session ending for want of an adjournment on the 9th; and of that opinion was the Court, for the words in stat. 2. Hen. 5. c. 4. *and more often if need be*, were never considered as giving more than one *original Session* in a quarter, but only empowering adjournments. The country must take notice of adjournments, but are not supposed to expect a new Session till the usual time.—Order of Session quashed. 2 Str. 1263.

So in the case of *R. v. West Torrington*, Tr. 22 & 23 Geo. 2. the Session was held at Kirton, and from thence adjourned to Caistor, at which place no Session was held pursuant to the said adjournment;—afterwards a Session was held at Horncastle; and the appeal was heard and determined there. **By the Court.** The Session at Horncastle could not take up the appeal for want of jurisdiction: a *Quarter-Session* must be holden four times in a year, as directed by statute; and it may be adjourned from time to time, and from place to place; but if it is once dropped, it cannot be resumed. Burr. S. C. 293.

* 15 E. R. 682.

† 2 Salk. 666.

‡ 2 Bott. 713.

Wherefore, in the event of an equal division of the justices, it is proper for the clerk of the peace to enter an adjournment.*

The justices who issue the precept to convene a Quarter Session, may name any place within the county, division, riding, or liberty, for which it is summoned, as that where it is to be holden, according to their discretion; and thither all officers and suitors of the court will be bound to give their attendance. †

The places
where to be
holden.

In counties, wherein the situation of the chief town is not central, or the population is very unequally distributed in the different parts, the greatest portion being at a distance from the county town, it is usual, as it is both lawful and expedient, to hold the Sessions successively at two or more of the principal places within the county, where proper accommodations for the purpose are to be obtained. In other counties, where similar circumstances exist, it is usual to adjourn every Session from one quarter of the county to another.

FORM OF A PRECEPT TO SUMMON A SESSION. ‡

County of.... { We A. B. and C. D. Esqs., two of the justices
of our Sovereign Lord the King assigned to
keep the peace in the county of..... aforesaid, and
also to hear and determine divers felonies, trespasses, and other
misdemeanors committed in the same county, one of us being of
the quorum, to the sheriff of the same county, greeting: On the
behalf of our said Sovereign Lord the King, we command
you, that you omit not, by reason of any liberty within your
county, § but that you enter therein, and that you cause to
come before us, or some other justices assigned to keep the peace
in the said county, and also to hear and determine divers felonies,
trespasses, and other misdemeanors in the said county com-
mitted, on the day of now next
ensuing, at the hour of in the forenoon of the same day,

* 2 Bott. 713.

† Lamb. b. 4. c. 2.—Dalt. 185.

‡ Imp. Off. Sher. 3d edit. 252.

§ If there be a Liberty, or other Franchise in the County, possessing an exclusive jurisdiction, that is to say, a jurisdiction in which the justices of the county at large are prohibited from interfering, it will be proper, as it is usual, to add in this place, (*except the liberty of* within the same). 4 Chit. C. L. 176.

at in the said county, twenty and four good and lawful men of the body of the county aforesaid, then and there to enquire, present, do, and perform, all and singular such things, which on the behalf of our said Sovereign Lord the King, shall be enjoined to them;—also that you make known to all coroners, keepers of gaols, and houses of correction, high constables and bailiffs of liberties, within the county aforesaid, that they may be then and there to do and fulfil the things which, by reason of their offices, shall be to be done. Moreover, that you cause to be proclaimed through the said county in proper places the aforesaid Session of the Peace, to be holden at the day and place aforesaid, and do you be then there, to do and execute those things which belong to your office. And have you then and there as well the names of the jurors, coroners, keepers of gaols, and houses of correction, high-constables and bailiffs, aforesaid, as also this precept.

Given under our hands and seals at in the county aforesaid, the day of in the year of the reign of

When the sheriff shall have received this precept, it becomes his duty to direct several warrants to the bailiffs of liberties and hundreds, containing the substance of it in the following form.

County of... { P. Q. Esquire, sheriff of the county aforesaid, to G. H. Bailiff of the hundred of in the said county greeting: By virtue of a precept under the hands and seals of A. B. and C. D. Esquires, two of his Majesty's justices, appointed to keep the peace in the said county; and also to hear and determine divers felonies, trespasses, and other misdemeanors, committed in my said county, one of them being of the *quorum*, to me directed.

These are in his Majesty's name to will and require you, that you forthwith make known by open proclamation, in every market town, and all other places convenient within the hundred of aforesaid, that the next General Quarter Session of the peace of, and for, the county aforesaid is to be holden and kept at in the town of in the county aforesaid, on Wednesday, the day of now next ensuing, at the hour of nine of the clock in the forenoon of the same day; and that you give notice to all justices of the peace, coroners, keepers of gaols, and houses of correction, and high constables of the said hundred, that they be then and there present, to do and perform that which to their several offices doth appertain: And that all those who ought to prosecute any prisoner or prisoners in the gaol of the said county, or who are bound over then to appear and answer, be then and there present, to prosecute against them according to law: And also that you summon and warn the persons whose names are underwritten, that they be then,

and there, present to serve on the grand jury, and to inquire on his Majesty's behalf, for the body of the county aforesaid, for all such matters and things as shall be then and there given them in charge: and also that you summon and warn the persons underwritten, being able and sufficient freeholders of the said hundred that they be then and there present to serve on the petty jury for his Majesty's service: And that yourself be then and there present to make return thereof. And herein neither you nor them may fail, at your and their perils. Given under the seal of my office the day of in the year of the reign of our Sovereign Lord George the Third, by the grace of God of the United Kingdom of Great Britain and Ireland, King, Defender of the Faith, &c. and in the year of our Lord

Then the sheriff makes his return of the summons to the Sessions, thus:

The execution of this precept appears in certain pannels hereto annexed. I further certify that I have given notice to all coroners, keepers of gaols and houses of correction, high-constables and bailiffs of liberties within my county, to be and appear at the time and place within mentioned, to do and perform, &c.; and have caused to be proclaimed through my county, in proper places, the Session within mentioned.

The answer of

Then on a piece of parchment, write the names of the jurors, coroners, keepers of gaols, &c.

THE STYLE OF THE SESSIONS.

County of.... { THE General Quarter Session of the Peace
holden at in the town of
..... in and for the said county on the day
of in the year of the reign of our Sovereign Lord George the Third, of the United Kingdom of Great Britain and Ireland, King, Defender of the Faith, and so forth, before and Esquires, and others, justices of our Sovereign Lord the King, assigned to keep the peace in the said county; and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed, and of the *quorum*, and so forth.

CHAPTER II.

THE DUTY OF ATTENDANCE UPON THE SESSIONS.

Of the Custos Rotulorum, Justices, Sheriff, Clerk of the Peace, Coroner, Gaolers, Constables, Jurors, Suitors, Pleaders, &c. with their, and every of their, Duties, Oaths, Privileges, Indemnities, Fees, &c.

Custos Rotulorum.

THE CUSTOS ROTULORUM is the principal personage in the constitution of the Session of the Peace.

He is the first *civil* officer in the county, as the Lord Lieutenant is the highest *military* one: of late years, indeed, it has been usual for the same person to hold both offices, but they are entirely distinct in their appointments and duties.* He has, as his title implies, the custody of the rolls, or records of the sessions of the peace, and of the commission of the peace. He is nominated by the King under his sign manual, selected, as Lambard informs us, "either for *wisdom, countenance, or credit*."† He is always himself a justice of the peace and *quorum*, in the county wherein he has his office; but he has nevertheless been generally considered rather in the light of a minister, than a judge, on account of the special charge in the commission—"Quod ad dies, et loca predicta, brevia præcepta, processus, et indictamenta predicta coram te, et dictis sociis tuis venire facias."

How appointed.

"No person shall be appointed to the office of *Custos Rotulorum* within any shire, but such as shall have a bill signed with the King's hand for the same; which shall be a warrant to the Lord Chancellor to make a commission, assigning the same person to be *Custos Rotulorum*, until the King hath by another bill appointed one other person to

* 4 Black. Com. 272.

† Lamb. b. 4. c. 3.

have the office; and the *Custos Rotulorum* shall exercise the office by himself, or his deputy, learned in the laws, according to the tenor of their commission." *

But the Archbishop of York, the Bishop of Durham, the Bishop of Ely, and all to whom the King or his progenitors, by letters patent, have granted any liberty to make any of the said officers *Custos Rotulorum*, shall enjoy the same liberty.†

The *Custos Rotulorum*, by virtue of his place, having the custody of the rolls of session ought to attend the sessions by himself, or his deputy, who is the clerk of the peace. To attend the Sessions.

He is directed by statute "to appoint a sufficient person residing within the county, to execute the office of clerk of the peace, by himself or sufficient deputy, such deputy being admitted by the *Custos Rotulorum*, so often as the office of clerk of the peace shall be vacant.‡

But he shall not sell the said place, directly or indirectly, under the penalty of losing his said place of *Custos Rotulorum*, and forfeiting double the value of what he shall have taken for the same, to be recovered by him that will sue, to his own use, in any of the Courts of Westminster. §

THE JUSTICES, by whom the session is to be holden, are, of course, the next persons, after the *Custos Rotulorum*, to be noticed. The Justices.

It requires at least two Justices to compose a session, whereof one must be of the *quorum*. This appears from the very words of their commission, which are, so far as they relate to the present subject of consideration, as follows. "We have also assigned you, and every two, or more, of you, of whom any one (*quorum unus*) of you the said A. B., C. D., &c. we will shall be one, our Justices to enquire the truth more fully, by the oath of good and lawful men of the aforesaid county, by whom How many necessary to compose a Session.

* 37 Hen. 8. c. 1.—1 Wm. & Ma. stat. 1. c. 21.

† 37 Hen. 8. c. 1.

‡ Ib.

§ Wm. & Ma. st. 1. c. 21.

the truth of the matter shall be better known, of all and all manner of felonies, poisonings, enchantments, sorceries, trespasses, forestallings, regratings, engrossings, and extortions, whatsoever; and of all, and singular, other crimes and offences of which the Justices of our Peace may or ought lawfully to enquire, &c. &c.—And to hear and determine all, and singular, the felonies, poisonings, &c. &c. aforesaid, &c. &c. according to the laws and statutes of England, &c.—And the same offenders, and every of them for their offences, by fines, ransoms, amerciaments, forfeitures, and other means, as according to the law and custom of England, or form of the ordinances and statutes aforesaid, it has been accustomed, or ought to be done, to chastise and punish.

“ And therefore we command you and every of you, that to keeping the peace, ordinances, statutes, and all and singular other the premises, you diligently apply yourselves;—and that at certain days and places, which you, or any *such two or more* of you as aforesaid, shall appoint for these purposes, into the premises ye make enquiries; and all and singular the premises hear and determine, and perform and fulfil them in the aforesaid form, doing therein what to justice appertains, according to the law and custom of England: saving to us the amerciaments and other things to us therefrom belonging.

“ And we command by the tenor of these presents our sheriff of M. that at certain days and places, which you, or any such two or more of you, as aforesaid, shall make known to him, he cause to come before you, or such two or more of you, as aforesaid, so many and such good and lawful men of his bailiwick, (as well within liberties as without) by whom the truth of the matter in the premises shall be the better known and inquired into.”

Such then is the foundation of the authority by which any two Justices of a county, division, riding, or liberty, one being of the *quorum*, may hold a General Quarter Session of the peace.

Formerly it was customary to appoint only a select number of Justices, eminent for their skill and discretion, to be of the *quorum*; but now the practice is to advance almost all of them to that dignity, naming them all over again in the *quorum* clause, except perhaps only some one inconsiderable person for the sake of propriety.*

Indeed the advancement of learning in modern times, made any distinction of this kind unnecessary, long before it was removed in any instance by legislative provision, or even by the extension just noticed in the commissions.

The first statute which recognized this alteration, was in the 26th of Geo. 2.† which enacted that no act, order, adjudication, warrant, indenture of apprenticeship, or other instrument, done or executed by two or more Justices, which doth not express that one or more of them is of the *quorum* (although the statutes respectively require that one of the Justices shall be of the *quorum*) shall be impeached, set aside, or vacated for that defect only.

And by a subsequent statute,‡ in cities, boroughs, towns corporate, franchises, and liberties, which have only one Justice of the *quorum*, all acts, orders, adjudications, warrants, indentures of apprenticeship, or other instruments, done or executed by two or more Justices, qualified to act therein, shall be valid, although neither of the said Justices shall be of the *quorum*.

It may therefore now be fairly admitted, that any two, or more, of the persons named in the commission of the peace for any county, division, riding, or liberty, are competent to hold a General Quarter Session for the same, respectively, having complied with the requisite forms prescribed by divers statutes, all of which are directed to secure three objects; viz. that the persons executing an office of so much trust and responsibility, shall be in such situations of life, as to offer a reasonable presumption that they will be above corruption; secondly, that they shall be loyal subjects of that government, the peace of which they are appointed to protect; and, thirdly, that they shall be conformists to the religion of the State.

* 1 Black. Com. 351.

† 26 Geo. 2. c. 27.

‡ 7 Geo. 3. c. 21.

- Qualifications.** The specific qualities, by which they are particularly pointed out, are that "they shall be of the most sufficient knights, esquires, and gentlemen of the law." * And they must be resident within the counties for which they act.†
- Property.** And must be *possessed of*, in law or equity, for their own use in possession, a freehold, copyhold, or customary estate, for life, or for some greater estate, or an estate for some long term of years, determinable, upon one or more lives, or for a certain term originally created for twenty-one years or more, in lands, tenements, or hereditaments, in England or Wales, of the clear yearly value of 100*l.*, above what will discharge all incumbrances affecting the same, and all rents and charges payable out of the same; or, be entitled to the immediate reversion of remainder of lands leased for one, two, or three lives, or for any term of years determinable on the death of one, two, or three lives, upon reserved rents of the clear yearly value of 300*l.*,‡ and if any Justice shall *act without such qualification*, he shall forfeit 100*l.*§

* 13 Ric. 2. 7.

† Hen. 5. st. 1. c. 4. but now by 28 Geo. 3. c. 49. any Justice acting as such for any two or more counties, being adjoining counties, may act in all matters and things whatsoever, concerning, or relating to, any or either of the said counties, provided he be resident in one of them.

‡ 5 Geo. 2. c. 11.; 18 Geo. 2. c. 20.

§ Therefore it is not sufficient that he be possessed of the qualification required *at the time* of his *taking* upon himself the office, but he must *continue* to possess it, *so long as he continues* to act, or he will incur the penalty.

Action *qui tam* was tried at York summer assizes, 1817, Wright *v.* Horton. It was to recover certain penalties for acting as a justice of the peace on several occasions in and for the county of York, not being *at the said several times* in possession of the property required by law. The facts of the case were, that Mr. Horton, the defendant, had been appointed a justice of the peace for the county of York, at a time when he was possessed of great wealth, had sued out his *dedimus*, delivered in a schedule of the property on which he claimed his qualification, taken the oaths required, and acted several years as a magistrate, with honour and reputation. Subsequently to this, however, his affairs became deranged, and he was in York Castle at the suit of certain creditors,

And to secure the particular object intended by these provisions, no person shall be capable of acting as a Justice of the Peace, who shall not, before he acts, at some general or quarter session for the county, or division, &c. for which he intends to act, take and subscribe the following oath.*

I, A. B. do swear that I truly and *bona fide* have such an Oath of estate in law or equity, to and for my own use and benefit, con- qualification. sisting of (*specifying the nature of such estate, whether messuage, land, rent, tithe, office, benefice, or what else*) as doth qualify me to act as a Justice of the Peace for the county, riding, or division of according to the true intent and meaning of an Act of Parliament made in the eighteenth year of the reign of his Majesty, King George the Second, entitled, "an act to amend and render more effectual an act passed in the fifth year of his said Majesty's reign, entitled an act 'for the further qualifications of Justices of the Peace,'" and that the same (*except where it consists of an office, benefice, or ecclesiastical preferment, which it shall be sufficient to ascertain by their known and usual names.*) is lying, or being, or issuing out of land, tenements, or hereditaments, being within the parish, township, or precinct of (or in the several parishes, townships, or precincts of and) in the county of (or in the several counties of and) (*as the case may be*).

from which place he was released by delivering in a schedule, and making an assignment of *all his* property, under the provisions of the Insolvent Act of 53 of the King: so that it was impossible he could have any property previously, but what such assignment must have divested him of; and if he came into possession of any *after*, to avail himself of it, as a defence to this action, he must have given notice of it, which he had not done. Subsequent, however, to his liberation, he had continued to act as a Justice of the Peace, and for the act so done, this action was commenced. It was intimated, that the lady of the defendant was in the receipt of more than sufficient to operate as a qualification; but it was replied, that the defendant could have no controul over this property, or he ought to have assigned it over with the rest of his effects at the time of his liberation under the Insolvent Act; and if it were indeed, as must be presumed by his not having so done, the separate provision of his wife, over which he had himself no controul, it could not serve him as a qualification, and an answer to this action.

Wood, B. before whom the question was tried, directed the jury to find a verdict on one of the counts of the indictment for a single penalty.

* 18 Geo. 3 c. 29.

Oath to be recorded. This oath so taken and subscribed, is to be kept among the records of the sessions, by the clerk of the peace, who is to deliver an attested copy of it to any person requiring the same, on paying two shillings for it, and such attested copy will be evidence on any issue in any suit brought under the statute which requires the qualification.*

Attested copy evidence.

Penalty.

Any person who shall act as a Justice without having taken and subscribed the above oath respecting his qualification, or without being actually qualified according to the declaration contained in it, is liable to a forfeiture of 100*l.* one moiety to the poor of the parish in which he most usually resides, and the other moiety to whoever will sue for the same, in any of the Courts of Westminster, within six months after the commission of the offence.*

Proof to be on defendant.

The proof of the qualification is to lie on the defendant, and he cannot avail himself of any lands, &c. not contained in such oath, unless he deliver a notice of his intention to insist on such lands, &c. to the plaintiff or his attorney, in writing, at or before the time of pleading, specifying such lands, and the parish and county where situated (except offices and benefices, as before excepted in the oath itself). †

Where the lands contained in the said oath or notice, are together with other lands liable to any charges, rents, or incumbrances, for the purposes of this act, such lands are deemed chargeable only so far as the other lands are not sufficient to pay. And where the qualification or any part thereof consists of rent, it is sufficient to specify in such oath or notice, so much of the lands out of which such rent is issuing, as are of sufficient value to answer such rent.*

Discontinuance of actions.

After such notice, the plaintiff is allowed, if he think fit, to discontinue his action on payment of costs, with leave of the court; but if he discontinue otherwise, or be nonsuit, or have a verdict against him, the defendant will be entitled to treble costs.*

* 18 Geo. 3. c. 29.

† *Id.* See *Wright v. Horton*. Note, *ante*, p. 28.

These provisions, however, respecting pecuniary qualification, only extend to what are usually denominated "*County Justices*;" that is, to the description of persons, of whose pretensions Government is supposed to know nothing but from the situation they fill in society, in regard to *property only*. For they do not extend to persons who, from the offices they hold, or the rank in society which they fill, are supposed to be previously and eminently qualified in some way or other for the important trust.

Thus, they do not extend to any city, town, cinque-port, *Exceptions.* or liberty, having Justices of Peace within their limits.

Nor to any peer or lord of parliament, or to the lords of the privy council, justices of either bench, barons of the Exchequer, attorney or solicitor-general, the justices of the great sessions of Chester and Wales, or to the eldest son, or heir apparent, of any peer or lord of parliament, or of any person qualified to serve as a knight of a shire. Nor to the officers of the board of green-cloth, or the commissioners, and principal officers of the navy, or the two under secretaries of state, or the secretary of Chelsea College, where they usually have been justices. Nor to the heads of colleges, or halls, or the vice-chancellors, or to the mayors of Oxford and Cambridge, but that *they* may respectively be Justices in the counties of Oxford, Berks, and Cambridge, and the cities and towns within the same.*

Having dismissed the subject of pecuniary qualification, the next thing to observe, is, that the person who intends to act as a Justice, must sue out a writ from the Chancery, called, from the first words of it, a writ of *Dedimus potestatem*, to enable him to take "the oath of office," before some other acting Justice or Justices, to be certified *Dedimus potestatem.* into the Court, from which it issues, within a time specified, by the clerk of the peace.

THE FORM OF THE OATH IS AT THIS DAY AS FOLLOWS.

Ye shall swear that as Justice of the Peace in the county of *Oath of office.*
M. in all articles in the King's commission to you directed, you

shall do equal right to the poor and to the rich, after your cunning wit and power, and after the laws and customs of the realm, and statutes thereof made: And ye shall not be of counsel of any quarrel hanging before you: And that ye hold your sessions after the form of the statutes thereof made: And the issues, fines, and amerciaments that shall happen to be made, and all forfeitures that shall fall before you, ye shall cause to be entered without any concealment (or embezzling) and truly send them to the King's exchequer. Ye shall not let for gift or other cause, but well and truly ye shall do your office of Justice of the Peace in that behalf: And that you take nothing for your office of justice of the peace to be done, but of the King, and fees accustomed, and costs limited by the statute. And ye shall not direct nor cause to be directed, any warrant (by you to be made) to the parties, but you shall direct them to the bailiff of the said county, or other the King's officers or ministers, or other indifferent persons, to do execution thereof.

So help you God.

Having thus secured, so far as the possession of property, and the verification of that property, can be supposed to do it, the respectableness of the Justice; and moreover, his incorruptibleness, so far as the obligation of an engagement by oath can secure it; the legislature has next adverted to a security for his loyalty and his conformity, by requiring that, "every Justice shall, within six calendar months, take the oaths of allegiance and supremacy, and abjuration, and make and subscribe the declaration against transubstantiation in one of the Courts of Westminster, or at the general, or quarter, session of the peace where he shall be or reside, as other persons qualifying for offices,"* which oaths and declarations are as follow.

Oaths of
allegiance,
&c.

* 25 Car. 2. c. 2.—1 Geo. 1. st. 2. c. 13.—2 Geo. 2. c. 31.—9 Geo. 2. c. 26.—6 Geo. 3. c. 53.

The oath of allegiance is common to all Governments, and varies but little, in any of them, being merely an obligation to defend the existing state. In England, anciently, every male above twelve years of age was obliged to take this oath in the torn or leet, and it was a high contempt to refuse it. The oath of supremacy was the necessary consequence of abolishing the papal authority at the Reformation. The oath of abjuration was imposed at the Revolution, in order to exclude the Stuart family from pretending to the throne. It has received several alterations, but now stands determined by the 6th of Geo. 3.

THE OATH OF ALLEGIANCE, BY 1 GEO. 1. ST. 2. C. 13.

I, A. B. do sincerely promise and swear, that I will be faithful *Of Allegiance.* and bear true allegiance to his Majesty, King George. So help me God.

THE OATH OF SUPREMACY, BY 1 GEO. 1. ST. 2. C. 23.

I, A. B. do swear, that I do from my heart abhor, detest, and *Of Supremacy.* abjure, as impious and heretical, that damnable doctrine and position, that princes excommunicated, or deprived by the authority of the See of Rome, may be deposed or murdered by their subjects, or any other whatsoever. And I do declare that no foreign prince, person, prelate, state, or potentate, hath, or ought to have, any jurisdiction, power, superiority, pre-eminence, or authority, ecclesiastical or spiritual, within this realm. So help me God.

THE OATH OF ABJURATION, BY 6 GEO. 3. C. 53.

I, A. B. do truly and sincerely acknowledge, profess, testify, *Of Abjuration.* and declare, in my conscience before God and the world, that our Sovereign Lord, King George, is lawful and rightful King of this realm, and all other his Majesty's dominions, thereto belonging. And I do solemnly and sincerely declare, that I do believe in my conscience, that not any of the descendants of the person who pretended to be Prince of Wales, during the life of the late King James the Second, and since his decease pretended to be, and took upon himself the style and title of, King of England, by the name of James the Third, or of Scotland, by the name of James the Eighth, or the style and title of King of Great Britain, hath any right or title whatsoever to the crown of this realm, or any other the dominions thereunto belonging. And I do renounce, refuse, and abjure, any allegiance or obedience to any of them. And I do swear that I will bear faith and true allegiance to his Majesty, King George, and him will defend to the utmost of my power against all traiterous conspiracies and attempts whatsoever, which shall be made against his person, crown or dignity. And I will do my utmost endeavours to disclose and make known to his Majesty and his successors, all treasons and traiterous conspiracies which I shall know to be against him, or any of them.

And I do faithfully promise, to the utmost of my power, to support, maintain, and defend, the succession of the crown against the descendants of the said James, and against all other persons whatsoever, which succession, by an act entitled, 'An act for the further limitation of the crown, and better securing the rights and liberties of the subject,' is, and stands limited, to the Princess Sophia, Electress and Dutches Dowager of Hanover, and the heirs of her body being protestants. And all these things I do plainly and sincerely acknowledge and swear, according to the express words by me spoken, and according to the

plain and common sense and understanding of the same words without any equivocation, mental evasion, or secret reservation whatever.

And I do make this recognition, acknowledgement, abjuration, renunciation, and promise, heartily, willingly, and truly, upon the true faith of a Christian. So help me God.

THE DECLARATION AGAINST TRANSUBSTANTIATION.

Declaration
against trans-
substantiation.

I, A. B. do declare, that I do believe that there is not any transubstantiation in the sacrament of the Lord's Supper, or in the elements of bread and wine, at, or after, the consecration thereof by any person whatever.

To be regis-
tered.

This declaration is to be subscribed by the Justice qualifying, at the same time that he takes the oaths, and the like register is to be kept of it.*

Receiving
the Sacrament.

The last test, which is imposed on the Justice qualifying, respects also his conformity, and requires that, within six months after admittance into, or receiving of, his office, he shall receive the sacrament of the Lord's Supper, according to the usage of the Church of England, *in some public church, upon some Lord's day, immediately after divine service and sermon*; a certificate of which, under the hands of the minister and churchwardens, he shall first deliver to the court where he takes the oaths, and make proof of the truth thereof by two witnesses on oath, all of which must also be put on record. And every such person that shall neglect to take the oaths or the sacrament, as aforesaid, and after such neglect shall execute his office, and being thereupon convicted, upon information, presentment, or indictment, in any of the King's courts at Westminster, or at the assizes, such person shall be disabled to sue any action or information in course of law, or to prosecute any suit in equity, or to be guardian of any child, or executor or administrator of any person, or capable of any legacy or deed of gift, or to bear any office, *or to vote at any election for members of parliament*, and shall forfeit £100, to be recovered by him that shall sue for the same in any of his Majesty's courts at Westminster.†

* 25 Car. 2. c. 2.

† 1 Geo. 1. st. 2. c. 13.—2 Geo. 2. c. 31.—9 Geo. 2. c. 26.—16 Geo. 2. c. 30.

FORM OF THE CERTIFICATE.

We the minister and churchwardens of the parish of..... Certificate.
 in the county of.....do hereby certify, that on Sunday
 the.... day of..... in the year of our Lord..... in the
 parish church of.....aforesaid, immediately after divine service
 and sermon, C. L. of.....in the county of....., esquire,
 did receive the sacrament of the Lord's Supper, according to the
 usage of the church of England. Witness our hands the day
 and year above written.

M. M. Minister.

A. O. }
 B. O. } Churchwardens.

It is to be observed, however, that an act occasionally ^{Act of Indem-}
 passes, whereby persons, who have omitted to qualify them-
 selves in due time, are indemnified, provided they qualify
 themselves within a time in such act limited, and provided
 judgment hath not been given against them for the penalty
 incurred by their neglect.

But no Justice is obliged to take and subscribe the oaths ^{Not to qualify}
more than once in one king's reign. For it is enacted by ^{a second time.}
 statute, "that all persons who have been or shall be ap-
 pointed Justices by any commission granted by his present
 Majesty, and have taken, or who shall take, THE OATHS OF
 OFFICE of a Justice of the Peace before the clerk of the peace
 or his deputy, and who shall have taken and subscribed, or
 shall take and subscribe at some session, THE OATH required
 by 18 Geo. 2. c. 20.* and all persons who shall be appointed
 Justices by any commission which shall be granted after
 his majesty's demise by any of his successors, and shall
 have, after the issuing the first commission whereby such
 persons shall be appointed Justices in the reign of any suc-
 ceeding king, taken and subscribed the said oaths—shall
 not be obliged during the reign of his present majesty, or
 during any future reign, in which such oaths shall have
 been so taken and subscribed as aforesaid, to take and sub-
 scribe the same oaths by reason of such persons being again

* By which statute it was, that the qualification was raised to its
 present standard; for, by the previous statute upon that subject, viz.
 13 Hen. 6. c. 11. 20*l.* per annum was the qualification.

appointed Justices by any subsequent commission granted during any such reign.”*

Prohibition.

Having noticed the qualifications and observances necessary to enable persons to act as Justices of the Peace, it only remains also to notice the prohibitions against particular persons from acting in that capacity.

Sheriff.

Sheriffs cannot act as Justices during the continuance of their shrievalty.†

Coroner.

Nor can the Coroner, in the county for which he is elected such, according to the better opinions. The same reason operates in both instances, viz. that a man shall not be both a judge, and an officer of the court, at the same time; but there is no special statute to prohibit the last mentioned officer.‡

**Attorneys,
Solicitors and
Proctors.**

Also no “Attorney, Solicitor, or Proctor, while he acts in that capacity, shall be a Justice of Peace for any county.” But this does not extend to Justices by charter.§

**Death, &c. of
King.**

The death or abdication of the King puts an end to the authority of all the Justices named by him in the commission; but by special statutes they are enabled to act for six months after, unless sooner prohibited by the successor.||

**New commis-
sion.**

Which of course is done by a new commission; for every new commission supersedes the former.* *

But these rules do not apply to Justices by charter, nor by commission.

**Discharge
under great
seal.**

Any Justice may also be discharged from the commission by writ under the great seal.

“Formerly,” says Blackstone, “it was thought that if a man were named in any commission of the peace, and had afterwards a new dignity conferred upon him, that this determined his office; he no longer answering the description of the commission.”††

**Promotion no
discharge.**

But now by statute, “although any Justice of the Peace be made duke, archbishop, marquis, earl, viscount, baron, bishop, knight, justice of one bench or the other, or ser-

* 7 Geo. 3. c. 9.

† 1 Mar. sess. 2. c. 8. ‡ Dalt. c. 3.

§ 5 Geo. 2. c. 18.

|| 1 Anne st. 1. c. 8.

** 1 Black, Com. 353. †† Ib.

jeant at law, yet he shall remain Justice, and have authority to execute the same.”*

The court of session has no authority to amerce any Justice of the Peace for non-attendance, as the Justices of assize *may* for the absence of any such Justices at the gaol-delivery; for it is a general rule that *inter pares non est potestas*; it being reasonable rather to refer the punishment of persons in a judicial office, in relation to their behaviour in such office, to other Judges of a superior station, than to those of the same rank with themselves. †

If a mayor, or other chief officer under a charter, without whose presence the session cannot be holden, voluntarily absent himself without sufficient cause, it is a misdemeanor, for which he may be punished by the Court of King's Bench on information. ‡

“Justices shall have for their wages 4s. the day, for their time of attendance in session, and their clerk § 2s. of the fines and amerciaments rising and coming of the said sessions, by the hands of the sheriffs; and the lords of franchises shall be contributory to the said wages, after the rate of their part of the fines and amerciaments. ||

And the escheats of the Justices shall be doubled, and the one part delivered by them to the sheriff, to levy the money thereon arising, and thereof to pay the Justices their wages by the hand of the sheriff, by indenture betwixt them, thereof to be made. But no duke, earl, baron, or banneret, shall take any wages.”**

Although Justices, as we have seen, are prohibited from taking any thing for the execution of their office, except “of the King, and fees accustomed, and costs limited by statute,” their respective clerks are entitled to certain fees to be settled in sessions from time to time, and approved and confirmed by the Judges of assize at the next assizes for the county. †† “But such table of fees shall be of no authority till it have received the confirmation of the said Judges of assize; and if any such clerk, at any time after

* 1 Ed. 6. c. 7.

† 2 Hawk. c.

‡ 1 Strange. 21.

§ Meaning their *public* clerk, or clerk of the peace.

|| 12 Ric. 2. c. 10.

** 14 Ric. 2. c. 11.

†† 26 Geo. 2. c. 14.

Wages for attendance.

Clerks' fee.

three months from such table of fees being ratified, shall take more on account of business done by the Justice to whom he is such clerk, he shall forfeit 20*l.* to whoever shall sue for the same, within three months, in the Courts of Westminster."*

In some counties the Justices had neglected to inspect the table of fees demanded by the clerk of the peace; in others there was no proof of their having been ratified by the Judges of assize; and scarcely in any two contiguous counties were the fees demanded similar. These circumstances occasioned difficulties to the clerks of the peace in recovering fees which were withheld from them, as well as to suitors of the respective courts of session in resisting exorbitant demands; wherefore, by a recent statute, the Justices of the Peace for every county, division, riding, liberty, city, and town, at their annual general, or their general quarter, sessions, (*as the case is,*) are directed to settle a table of fees to be taken by their respective clerks of the peace, throughout England and Wales, and the county palatine of Chester; and from time to time to alter and amend the same; subject nevertheless to confirmation by the next succeeding annual general, or general quarter, session respectively, or some adjournment thereof; as also to rectification by the Judges or Justices of assize, at the next assizes to be holden for the said counties, &c. respectively.

And no clerk of the peace, or his deputy, shall take or receive any larger fee than shall be allowed by such table, so confirmed and ratified, under a penalty of 5*l.* to be recovered in any of the Courts of Westminster.

And printed or written copies of such tables of fees shall be hung up in some conspicuous place, where the general or quarter sessions as aforesaid shall be as publicly holden; and so constantly kept, under a like penalty for every default of 5*l.* to be recovered as aforesaid.

* 26 Geo. 2. c. 14. This, it will be readily collected, is a specific penalty inflicted on the *private or personal* clerk of each individual justice, for demanding more than his legal fee for business done by him out of session. A similar offence by the *public* clerk, or clerk of the peace, becomes the offence of *extortion*, being committed by a public officer, and indictable as a misdemeanour.

Every suit or action however to be commenced within three calendar months after the offence.*

In Middlesex the table of fees is to be confirmed by In Middlesex. the three chiefs of the courts of law at Westminster. And in all places this table of fees, when ratified, is to be placed in the hands of the clerk of the peace, and by him hung up in a conspicuous part of the room where the quarter-sessions are holden, under a penalty of 10*l.* to be recovered in like manner.†

As the fees due to the clerks of Justices for the manual labour supposed to be performed by them, in taking informations, drawing warrants, &c. under the direction of their respective principals, are confined to the office of a magistrate *out of session*, except the last noticed point; viz. the publication of them; sufficient has been said on the subject here, where the object is confined as much as possible to the business of sessions.

Those monies under the denomination of fines, forfeitures, and penalties, which Justices are authorized by various statutes to receive on account of the king, or any other persons, *out of sessions*, are directed, by a recent act of parliament, ‡ to be paid annually, before the Michaelmas session, to the sheriff of the county; and a duplicate of the account of such fines, forfeitures, and penalties, to be sent to the clerk of the peace for the said county, or town clerk (*as the case may be,*) previous also to the said Michaelmas session; but as these provisions relate also, so far at least as respects the Justices, to their duties *out of sessions*, for the reasons before stated, it is sufficient to refer to the statute itself.

Fines, forfeitures, and penalties.

The last matter to be noticed relative to the Justices, is their indemnities in the execution of their office.

Indemnities of Justices.

"A Justice of the Peace is under the peculiar protection of the law: for he is not punishable at the suit of the party, but only at the suit of the King, for what he doth as Judge in matters which he hath power by law to hear and determine." §

As to private remedy by action.

* 57 Geo. 3. c. 91.
‡ 41 Geo. 3. c. 85.

† 26 Geo. 2. c. 14,
§ 2 Haw. c. 13,

This, as a general position, is not less correct, than it is reasonable; but it is, like all general rules, subject to some exceptions, as where the erroneous conduct of the Justice is obviously corrupt or malicious, and injurious.*

Two-fold by
public prosecution.

His indemnity, however, in the execution of his office, necessarily resolves itself into two divisions *here*; viz. 1st. in the capacity of an individual magistrate; and, 2dly, as a member of the court of Quarter Session. On what concerns him as an individual magistrate acting *out of Sessions*, little shall suffice.

It may fairly be laid down, then, as a general position, that unless it clearly appear that the Justice hath been partial, and maliciously, or corruptly, influenced in the exercise of his authority, and hath consequently abused the trust reposed in him, the court above will not grant an information against him.

Justices not
punishable for
errors in judgment.

For the rule is invariable, that the court will never interpose to punish a justice of the peace for a mere error in judgment.†

By information.

By action or
indictment.

And even where a justice acts illegally, yet if he has acted honestly and candidly, without oppression, malice, revenge, or any bad view or ill intention whatsoever, the court will never punish him by the extraordinary course of an information; but leave the party complaining to their ordinary remedy or method of prosecution, by action or by indictment.‡

Not by both.

And it seems that the justice is not liable to be punished both criminally, and civilly; for before the court will grant an information, they will require the party to relinquish his civil action, if any such has been commenced: and even in the case of an indictment, and although the indictment be actually found, yet the attorney-general (on application made to him) will grant a *noli prosequi* upon such indictment, if it appear to him that the prosecutor is determined to carry on a civil action at the same time. §

* 1 Bur. R. 556.

† 2 Bur. R. 1162.

‡ 1b.—1 Term. R. 653. 692.

§ 2 Bur. R. 719.

And it is further provided by statute, "that no writ shall be sued out against, nor any copy of any process at the suit of a subject shall be served on, any Justice of the Peace, for any thing by him done in the execution of his office, until notice in writing of such intended writ or process be delivered to him,* or left at the usual place of his abode, by the attorney for the party who intends to sue, at least one calendar month before the suing out, or serving the same; in which notice shall be clearly and explicitly contained the cause of action, on the back of which notice shall be indorsed, the name of such attorney,† and the place of his abode, who shall be entitled to the fee of 20s. for preparing and serving such notice. Must have notice.

And unless it be proved upon the trial that such notice was given, the Justice shall have a verdict and costs." †

And further, by a still more recent statute, "that in all actions whatever, which shall be brought against any Justice of the Peace, for or on account of *any conviction under any act of parliament*; or for any act, matter, or thing whatsoever, done or commanded to be done by such Justice, for the levying any penalty, apprehending any party, or for or about the carrying of any such conviction into effect; in case such conviction shall have been quashed, the plaintiff in such action, besides the value and amount of the penalty levied, in case any levy thereof shall have been made, shall not be entitled to recover any more damages than 2d. nor any costs; unless it shall be expressly alleged in the declaration, and which shall be in an action upon the case only, that such act were done maliciously, and without any reasonable and probable cause. Action on account of any conviction.

And such plaintiff shall not be entitled to recover against such Justice any penalty levied, nor any damages or costs whatsoever, in case such Justice shall prove at the trial that such plaintiff was guilty of the offence whereof he had been convicted, or on account of which he had been

* See *Lovell v. Curry*, 7 T. R. 631.

† The surname at length, but the initial of the Christian name may be sufficient. *Mayhew v. Locke*, 2 Mar. R. 377.

‡ 24 Geo. 2. c. 44.

apprehended, or had otherwise suffered, and that he had undergone no greater punishment than was assigned by law to such offence."*

These instances of protection, it will be observed, relate only to the private duties of Justices *out of session*, and are sufficient for the purpose of shewing generally how much they are the objects of favour by the law. For further instructions, then, on this first division of the subject, other authorities must be referred to,† while we pass on to the proper object of present consideration, "the indemnity under which Justices perform their duties in *session*."

And it appears that similar protection is afforded to the Justices in session, that we have seen is held out to them when acting in their individual capacity, whether in repelling insults committed *against* their dignity, or in excusing errors committed *by* them.

During the exercise of a Magistrate's duty, whether in taking an examination of a person accused of an offence, or other legal exercise of his authority, if any person offer any indignity to, or utter any abuse of, such Magistrate or Justice, or commit or attempt to commit any of those offences which are understood in law by the term "breach of the peace, or of *good behaviour*;" he may be committed for the obstruction of justice "till he be discharged according to due course of law," that is after indictment; or he may be committed for a specified time, or to the sessions, for the breach of the peace, &c.; according as the particular description, or the enormity of the contempt may require.

Contempt in
the face of the
court.

So every contempt committed *in the face of the Court* is punishable *instantèr* by imprisonment, for this is a power necessarily attached to *every* court of justice; ‡ such as rude and contumelious behaviour, obstinacy, prevarication; breach of the peace, disturbance; treating with disrespect the process of the court; § arresting any suitor of the court in the face

* 43 Geo. 3. c. 141.

† See Pract. Expos. *title* PEACE, JUSTICES OF, and other authorities there mentioned.

‡ 2 Hawk. c. 1.—6 T. R. 530.

§ 4 Black. Com. 285. To enumerate particular instances of offences

thereof upon a civil suit, &c. * and for all these and similar offences against decency and good manners, as has been observed, the Justices in Session may instantly order the offender to be apprehended and imprisoned at their discretion. † Imprisonment in consequence thereof.

But they cannot, as the superior courts do, award an attachment for contempts of their orders committed out of court, but must have recourse to bill of indictment; which, being found, authorizes them to issue a warrant to apprehend the offender, to be dealt with as for any other misdemeanor. ‡ Contempt out of Court. Indictment in consequence thereof.

It is also broadly laid down by many authorities, that Justices are not punishable for what they say, or do, in sessions, unless there be manifest oppression, or wilful abuse of power. § It has even been said that a Justice is not

which come within any of these descriptions, would be an unprofitable waste of time, because in general they are so obvious, intelligible, and decisively distinguishable, that it requires only the application of common discretion to execute the powers which the law has entrusted to the courts. But an instance or two, rather out of the ordinary course of this description of offences, may not be without their use; not only by way of illustration of the general doctrine here laid down, but as a commentary on other offences, which may bear some general resemblance in principle, although none in their particular features. Thus it has been holden to be a great contempt of the process of the court, to refuse to be sworn to give evidence to the grand jury, for which a court of session have a power to fine, and to commit till the fine be paid. 1 Salk. 278.

At a copy-hold court a steward of a manor told a suitor that "he was a resient," who replied "*you lie*." The steward fined him 20*l.* for contempt, and although no prescription was proved, this was holden good. The steward indeed had not the power, which courts of law have, of imprisoning, but it was decided that an action would lie for the fine. 3 Salk. 83.

And in a county court holden for electing members of parliament, the sheriff was justified in taking a freeholder into custody for making a disturbance, and sending him before a justice to be committed. 1 Taunt. 146.

And a defendant in a court of justice, acquitted of the original charge against him, may nevertheless be committed, or made to find sureties for every contempt of court during his trial. Cro. Car. 507.

* 2 Hawk. c. 1. † Staunf. P. C. 78.—4 Black Com. 283.

‡ 2 Sess. Ca. 176. § Staunf. P. C. 173.—2 Barnardist. 249.

punishable by indictment for words addressed to jurors, in his judicial capacity, however gross they may be; as where a Justice, in the general session of the peace, said to the grand jury, "You have not done your duty, you have disobeyed my commands; you are a seditious, scandalous, corrupt, and perjured jury;" for Lord Mansfield, on a motion to quash an *indictment* against a Justice of the Peace for using such words, is reported to have said as follows: "A Judge of a court of record cannot be put to answer civilly, or criminally, for words spoken in office."

And upon a motion for an information against four Justices for refusing to amend a poor rate, under circumstances of even *strong suspicion* of improper motives, the same Chief Justice took occasion to say, "it must be a very strong case indeed, with *very flagrant proofs* of corruption, in which the court would grant an information against Judges *acting in a court of record* with powers entrusted to them by the constitution.*

The Sheriff.

THE SHERIFF OF THE COUNTY is the next officer of the session who claims notice. He was by the common law a principal conservator of the peace; and may, *ex officio*, award process of the peace, and take surety for it; and it is said that the security so taken is a recognizance, and matter of record.† But, as has been previously observed, he cannot, during his shrievalty, act in the capacity of a justice of the peace. And he has no authority to take a *bond* for the appearance of persons *arrested* by him, under process issuing upon an indictment at the sessions for a misdemeanor, but must take a recognizance for their appearance.‡

How appointed.

At the common law this officer was chosen by the county, as the coroner is at this day; but he is now appointed "at the Exchequer by the chancellor, treasurer, and chief baron, taking to them the chief justices."§

The duties of the Sheriff are various and diversified, with

* 1 Black. Rep. 437.

† 4 T. Rep. 505.

‡ 2 Hawk. c. 8.

§ 14 Ed. 3. c. 7.

respect to the sessions of the peace, as well previous to, as ^{Must attend} during the time of, their sitting. He is to provide and ^{the Sessions.} make ready (except when this duty is otherwise provided for specially by statute, or otherwise) a fit and decent place for the justices of the peace to hold their general, and general quarter, sessions in.* It has already been noticed that he is to proclaim the sessions, to return the grand jury, to give notice to all stewards, constables, and bailiffs of hundreds and liberties, coroners, and other officers.

It is the duty of the Sheriff, either in person or by deputy, to attend the sessions of the peace, there to return his precepts, to receive fines for the King, and to take charge of the prisoners.† For the county gaol is under the direction of the Sheriff by statute.‡ Insomuch, that if the gaoler, who is merely his servant, suffer a felon to escape, the Sheriff may be indicted, fined, and imprisoned. §

* Dalt. 372.

† 2 Hawk. c. 8.—Dalt. 372.

‡ 14 Ed. 3. c. 10.—And 19 Hen. 7. c. 10.

§ 1 Hale, 597.—If the justices in session do not insist on the attendance of the Sheriff, either in person, or by his deputy the undersheriff, the omission is merely from courtesy, and not from any want of authority; for the justices in session have power similar to the judges of law, and for the same reasons. There may, perhaps, not be on record any instance of the exercise of these powers in modern times, in courts of session of the peace; but a very recent one has occurred in the great session of Brecon in Wales, wherein the sheriff was fined on account of absence in 100*l*. See 4 Chit. C. L. as follows.

Brecon (to wit). Be it remembered that at the great session and gaol-delivery of our Lord the King for the said county, holden at Brecon, in the said county, on Saturday the 30th day of March in the 39th year of the reign, &c. before G. H. and A. M. esquires, justices of our said Lord the King, of the great sessions of the said county, assigned to deliver the gaol of the county aforesaid of the prisoners therein being, and also to hear and determine divers felonies, &c. E. L. L. High-Sheriff of the said county, is duly and solemnly called to appear and give his attendance at this same session, to do and perform those things which to his office do belong and appertain; and as by his Majesty's writ in that behalf, to him directed and delivered, he is commanded; and the said E. L. L. High-Sheriff as aforesaid, not accordingly appearing and attending at this same session, in obedience to his Majesty's said writ, or otherwise to perform the duties of his said office, but contemptuously

Punishable
by sessions.

He is also punishable by the justices in session for any default in executing their writs and precepts; for being an officer of that court, he is of course amenable to it.*

But if he have a warrant from a justice of the peace to execute, he is not obliged to do it in person, but may authorize another to execute it; but he is nevertheless answerable for its being regularly done. †

And he cannot excuse himself from executing any precept because of resistance, for he is authorized by statute to take the power of the county in aid of him. ‡

Cannot sell
offices.

He has the appointment of the gaoler upon a vacancy, of the under-sheriff, and of the bailiffs. But he cannot dispose of any of these offices for money, for "none shall buy, sell, let, or take the office of under-sheriff, gaoler, bailiff, or other office pertaining to the office of High-Sheriff, on pain of 500*l.* half to the King, and half to him that shall sue within two years. §

Cannot re-
turn his
officers upon
inquests.

And the Sheriff shall not return any of his officers upon the inquest, on pain of 40*l.* half to the King, and half to him that shall sue in the sessions, or elsewhere." ||

When a Sheriff goes out of office, the custody of the county gaol is immediately vested in his successor, who of course becomes responsible; and all writs and processes, remaining unexecuted at the expiration of his shrievalty, he is directed by statute to turn over to his successor by indenture and schedule, who is compellable to execute and return the same.**

making default, therefore it is ordered that the said E. L. L. be fined, and he is accordingly by the court here fined and amerced in the sum of 100*l.* to be by him forfeited and paid to the use of our said Lord the King, for such his contempt and default as aforesaid. And it is further ordered that a *levari* do issue, under the seal of this court, to the coroners of the said county, or one of them, thereby commanding them, or one of them, to levy the said fine out of the goods and chattels, lands and tenements, of the said E. L. L.

Which fine was levied accordingly,—and the Court of B. R. refused to mitigate the said fine, the record whereof had been removed by *certiorari*. 8 T. R. 655.

* 2 Hawk. c. 22.

† 13 Edw. 1. st. 1. c. 30.

‡ 23 Hen. 6. c. 10.

† 2 Hawk. c. 13.

§ 3 Geo. c. 15.

** 20 Geo. 2. c. 37.

THE CLERK OF THE PEACE is an essential and constituent part of every session of the peace. He is appointed by the *Clerk of the Peace*.
 the *custos rotulorum* of the county, but amenable to the justices in session for the execution of his duties, which are various and important. Primarily, they consist in issuing the processes, and recording the proceedings, of the court; but there are various others imposed on him, as well by custom and the necessity of the thing, as by many positive statutes.

Under commissions by charter, such as in cities and corporate towns, the person who fills an analogous office, and whose duties are mostly similar, has usually some other title than that of "Clerk of the Peace," generally that of "Town Clerk;" and his appointment is usually in the disposal of the body corporate whose officer he is, and not in that of the *custos rotulorum* of the county.

It is directed by statute, that the Clerk of the Peace be an able and sufficient person resident in the county; but he may appoint a deputy with the like qualities, but to be approved and allowed by the *custos rotulorum*.*

To be a sufficient person, and may appoint a deputy.

We have seen that the *custos rotulorum* is forbidden to sell the office; and by the same authority the Clerk of the Peace is prohibited from purchasing it, under like penalties; viz. "that if he shall give any reward, fee, or profit directly, or indirectly, or any bond or other assurance to him or to any other person, for such appointment, he shall be disabled from holding the office, and shall moreover forfeit double the value of the thing given for the appointment, to whomsoever shall sue for the same in any of the Courts of Westminster."†

May not purchase his office.

THE FORM OF THE APPOINTMENT.

Whereas the office of the Clerk of the Peace for is now vacant, by the death of esq. late Clerk of the Peace for the said county, NOW KNOW ALL MEN by these presents, that the right hon. Thomas Earl of Custos Rotulorum of the said county of hath nominated, constituted, and appointed, and by these presents doth nominate, constitute, and appoint O. B. esq. a person skilful in the laws of England, and

Appointment.

* 37 Hen. 8. c. 1.

† 1 Wm. & Ma. c. 21.

now inhabiting and residing within the same county, to be Clerk of the Peace of the said county, to have, hold, execute, and enjoy the office of Clerk of the Peace of the county aforesaid, by himself or his sufficient deputy; and by himself or such deputy to have, receive, and take to the use of him the said O. B. all fees, wages, perquisites, advantages, emoluments, and appurtenances whatsoever, to the said office belonging, or in any wise appertaining, for and during so long a time as the said O. B. shall well behave and demean himself in the said office;—in testimony whereof the said Thomas Earl of hath hereunto set his hand and seal, the day of in the year of the reign of our Sovereign Lord George the Third, now King of the United Kingdom of Great Britain and Ireland, and in the year of our Lord

Cannot be appointed in any other manner.

And the custos cannot appoint him in any other manner than as prescribed by the statute; for if he do, he is no Clerk of the Peace; as if he appoint him during pleasure, instead of so long as he shall well demean himself, he does not execute the authority given him by the act, and so his nominee is no Clerk of the Peace.*

Has an estate for life in the office.

The statute having directed that he shall enjoy his office "so long as he shall well demean himself," he has of course an estate for life, or freehold, in the office, on the mere condition of behaving well; therefore if he perform the condition he cannot be dispossessed, nor is his estate forfeited by the death or removal of the custos.†

Misbehaviour in his office.

"But if he shall misbehave himself in his office, the justices of the peace in their general quarter session, or the major part of them, on complaint in writing exhibited against him, may upon examination and due proof thereof, openly in the said session, suspend or discharge him: and in such case the custos rotulorum shall appoint another person to the office, and in case of refusal or neglect so to appoint before the next general quarter session, the justices then and there assembled may appoint one."‡

It is scarcely possible to adduce examples of all the means by which a Clerk of the Peace may be said to be guilty of misbehaviour in his office, so as to forfeit his situation; but extortion has been decided to be one of them, inasmuch

* 12 Mod. Rep. 42.

† 4 Mod. 167. 173. 293.

‡ 1 Wm. & Mar. c. 21.

that upon proof in a summary way, either at the same, or any other sessions to which the matter may be adjourned, he may be superseded or discharged.*

And the order of session removing him, need not set out the evidence on which it is founded.†

And every Clerk of the Peace, before he enters upon his office, shall in open session take the following oath: ‡

I, A. B. do swear, that I have not, nor will, pay any sum or sums of money, or other reward whatsoever, nor have given any bond or other assurance to pay any money, fee, or profit, directly or indirectly, to any person or persons whomsoever, for such nomination or appointment. So help me God. Oath of office.

He must also take the oaths of allegiance, supremacy, and abjuration, and comply with the usual forms of persons qualifying for offices. Other oaths.

“No Clerk of the Peace, or his deputy, shall act as solicitor, attorney, or agent, or sue out any process at any general or quarter sessions, where he shall execute the office of Clerk of the Peace or deputy, on pain of 50*l.* to him who shall sue in twelve months, with treble costs.” § Not to act as a solicitor.

Beside issuing the processes, and recording the proceedings, of the sessions, he is directed by statute “to certify into the King’s Bench the names of such as shall be outlawed, attainted, or convicted of felony.” || To certify to the sheriff out-lawry.

And by a recent statute, viz. 55 Geo. 3. c. 49. to make annual return to the secretary of state of the prisoners tried for criminal offences within his jurisdiction.

“Also to deliver to the sheriff, within ten days after September 29, yearly, a perfect estreat or schedule of all fines, and other forfeitures, in sessions.” ** To deliver estreats.

He is also obliged to deliver duplicates of these upon oath yearly to the barons of the exchequer; but as this portion of his duties is foreign to the limits of the subject under discussion, we must pass on to others, which the practice of the court of session of the peace imposes on

* Mod. Cas. 192.

† Strange’s Rep. 996.

‡ 1 Wm. & Mar. c. 21.

§ 22 Geo. 2. c. 46.

|| 34 & 35 Hen. 8. c. 14.

** 22 & 23 Car. 2. c. 22.

him. A general view of these is all that can be useful, without enumerating such as are only occasional, or directed by statutes of local interest, as filing the rules of friendly societies, and the lists of insolvent debtors seeking relief from the sessions, registering the recognizances of ale-house-keepers, and other matters of similar kinds.

It is his duty, then, to read the commission, and the king's proclamation—to administer all oaths, whether to persons qualifying for offices, constables, jurors, or witnesses. Divers acts of parliament are directed to be read, and if not neglected, are read by the Clerk of the Peace. He calls upon the parties under recognizance, whether to prosecute, plead, or give evidence. He draws the indictments, arraigns the prisoners, and presents the bills to, and receives them from, the grand jury. He draws copies of traverses, makes out subpœnas and bench warrants, takes recognizances, receives the verdicts, and (where the undignified practice prevails of the chairman not pronouncing the judgment of the court), he is the organ through which its opinion is given on subjects of municipal and parochial law, and its sentence on criminal offenders is passed.

Further to enumerate his general duties would be superfluous, as they are partly to be collected from the established table of fees, and the remainder are pointed out by the different statutes which impose them, and which prescribe his remuneration.

Fees.

The more ancient fees of the Clerk of the Peace are established by usage, which gives them a sanction equivalent to that of the legislature. It has therefore been decided that every Clerk of the Peace may legally demand such fees as have been immemorially taken within his county, on such subjects *with which no statute has interfered*;* and that the justices in session have no controul over them, so as either to augment, abridge, or remit them: and as they have no power to alter, so they have none to compel payment, but he must recover them by action.† **IF**

* See stat. 57 Geo. 3. c. 91.

† 1 Ld. Raym. 703.—12 Mod. Rep. 608.

they be such fees as are certain and determined, an action of *indebitatus assumpsit* will lie, and if uncertain, *quantum meruit*.

It is said, however, that he is not bound "to enter judgment, or the like" at the suit of any, without having his legal fee for the same; but the distinction is taken, that if the Court order any thing, *without the suit of another*, viz. *ex officio*, he is compellable to enter the same without fee.*

But if, by colour of his office, he take more than his due, Extortion. it will be extortion, and punishable by fine and imprisonment, on indictment *at common law*. It should seem also that he is punishable under the statute 3 Edw. 1. c. 26, which inflicts for the penalty "the yielding twice as much as was received, beside being punished at the King's pleasure;" for though *generally* that statute has been construed to extend only to offices of anterior date, it has been decided to apply to Justices of the Peace taking fees contrary to their oath at their admission into office, though that office was not instituted till long after. †

Modern statutes having imposed a prodigious addition of business upon justices in the courts of quarter sessions, their officers have, of course, additional duties to perform, especially the Clerk of the Peace. In most of these instances, however, the particular statute imposing the burthen, apports also the remuneration. There would be much difficulty, and no utility, result, from a particular enumeration of all these acts. It is sufficient, therefore, in this place to observe, that where a statute has determined his fee, it is equally extortion in him to demand more, as in the case of fees sanctioned by prescriptive usage; and, secondly, that where no particular sum has been prescribed, an analogy, by no means difficult to ascertain and observe, might well be resorted to as the guide of his discretion. However, the statute of 57 Geo. 3. c. 91, recently referred to, has rendered further discussion of this subject unnecessary.

The suitors of the court are not only protected against

* Crompt. 159.

† Dalt. c. 41.—1 Hawk. 68.

Negligence of
the Clerk of
the Peace.

the *corruption* of the Clerk of the Peace, by the remedies already pointed out, but to a certain degree also against his *negligence*, by a particular statute, which enacts that "only two shillings shall be paid to him for drawing an *indictment of felony* ; and if it be defective he shall allow a new one gratis, on pain of forfeiting five pounds to him that shall sue." * Beside which specific penalty, it is holden that he is amerciable in the Court of King's Bench for gross faults in indictments drawn by him, and removable thither.† Also for indictments of immoderate and unnecessary length.

Coroner.

THE CORONER.—The office of Coroner is a very ancient one by the common law. Before the institution of justices, the Coroners were conservators of the peace, and persons of great authority and dignity;‡ insomuch, that none were eligible to the office under the degree of knights.§ Since the appointment of justices of the peace, much of the power with which Coroners were invested, is superseded thereby, and transferred to the former. They are nevertheless still considered by all writers on the subject, as part of the proper attendants upon the courts of quarter sessions;|| though it may be difficult perhaps to assign a sufficient reason for it now, since the preservation of the peace has ceased to be a part of their office; for it does not appear that they have any prescribed duty to perform *there*, except *occasionally*, and in the capacity of suitors, or of defendants.* *

* 10 & 11 W 3. c. 23.

† Lilly's Pract. Reg. 71.

‡ 4 Inst. 471.

§ Dougl. 193.

|| 4 Inst. 471. 3 Edw. 1. c. 10.—However by 14 Edw. 3. c. 8. no Coroner shall be chosen for a county unless he have land in fee sufficient in the same county, whereof he may answer to all manner of people. And where chosen by the county, if he be insufficient, the county shall answer for him. 2 Hale, 56.

¶ Dalt. c. 185.—Cro. Cir. Com. 34.

* * This observation is perfectly consistent with what is advanced elsewhere, as the duty imposed on Coroners, although originating *at*, and emanating *from* the session, does not require their attendance *in* it.

Besides his fee of 13s. 4d. awarded by an ancient statute ^{Fees allowed by the Sessions.} on every inquisition, * the Coroner is entitled, by a recent provision, † “to 20s. more, (*if not taken on a body dying in gaol*), and also 9d. for every mile he shall be compelled to travel *from* his usual place of abode, for the taking of every such inquisition; ‡ which sum shall be paid *by order on the treasurer, by the justices in sessions*, out of the county rates, for which order, no fee shall be paid; and for every such inquisition taken on a body dying in *prison*, he shall be paid so much as the *justices in sessions* shall allow, not exceeding 20s. to be paid in like manner.”

“But no Coroner of the king’s household, and of the verge of the king’s palaces, nor any Coroner of the admiralty, nor any Coroner of the county palatine of *Durham*, nor any Coroner of the city of *London* and borough of *Southwark*, or of any franchises belonging to the said city; nor any Coroner of any city, borough, town, liberty, or franchise, not contributory to the rates directed by the 12 Geo. 2. c. 29, or within which such rates have not been usually assessed, shall be entitled to any fee given by this act: but it shall be lawful for all such Coroners as are last mentioned to receive all such fees and salaries as they were entitled to by law before this act, or as shall be given them by the person by whom they are appointed.” §

* 3 Hen. 7. c. 1.

† 25 Geo. 2. c. 29.

‡ By a recent determination it seems these words do not authorize any allowance for the miles a Coroner has to *return*, after taking an inquisition, *to* his place of abode. It was a rule moved for in B. R. on behalf of one Cecil, Coroner of Oxford, against the justices thereof, in consequence of their having refused to make an order on the treasurer for the 9d. per mile on *returning* from taking inquisitions. The Court refused to make the rule absolute.

§ Coroners are of three kinds; 1st, by virtue of an office; 2d, by charter or commission; 3d, by election. 1. The lord chief justice of the King’s Bench is, by virtue of his office, principal Coroner in the kingdom, and may, if he pleases, exercise the jurisdiction of Coroner in any part of the realm. 2. The lord mayor of London is, by the charter of 18 Ed. 4. Coroner of London. The bishop of Ely also hath power to make Coroners by the charter of Hen. 7.; and there are Coroners of particular lords of franchises and liberties, who by charter have power

And unless the Coroner has taken an inquisition in due form, he is not entitled to any fees; for on a motion for a *mandamus*, to compel justices to pay to the Coroner the fees and travelling expences due to him, for taking four inquisitions upon four bodies cast by the sea upon the shore; it appeared that the papers, purporting to be inquisitions, *were not inquisitions at all*; as they were signed only by the Coroner and foreman of the jury. The principal question in the case was, whether, when the Coroner finds the body of a person manifestly drowned at sea, upon the shore, he may not take an inquisition on the body? The Court inclined to the opinion that he could not, and it was said to be the usage to bury such bodies without any inquisition being taken; but without expressly determining this, they said, that the first question which they had to decide, was, whether the Coroner had taken any inquisition at all? if he had not, he was not to be paid for what he had not done; this, therefore was an objection *in limine* to the application, for these enquiries not being signed by all the jurors, were not inquisitions.—*Mandamus* denied.*

And no Coroner of any liberty or franchise is entitled to any fees under this statute, unless such liberty or franchise be contributory to the county rates; for upon a *mandamus* to justices *to make an order* for payment of the fees and travelling expences of the Coroner of the *liberty and franchise* of the manor of Pontefract, in respect of certain inquisitions taken by him, THE COURT ordered the writ to be quashed, as it did not state, that the manor of Pontefract was contributory to the county rates, and consequently the justices had no authority by the stat. 25 Geo. 2. c. 29, to make any such order: and Lord Kenyon, Ch. J. observed, that the prosecutor should have alleged in the writ, all those facts which were necessary to shew

to create their own Coroners, or to be Coroners themselves, especially the jurisdiction of the admiralty and the verge. 8. The general Coroners of counties elected by virtue of statute Westm. 1. c. 18. and 28 Ed. 3. c. 6. 1 Hale 52; 4 Rep. 57; 1 Black. Com. 346.

* Nolan's R. 144.

that he was entitled to the relief prayed, and that he had a right to call on the magistrates to do that, for the non-performance of which he sued out his compulsory writ.*

If the Coroner take any fees beyond what are thus allowed by the law, he will be guilty of extortion. Extortion.

This offence, so far as we are here concerned with it, is What it is. defined to be "the taking of money by any officer, by colour of his office, either when none is due, or not so much is due, or where it is not yet due."† Thus a gaoler obtaining money from his prisoner, or a churchwarden from the parishioners, *under colour of their respective offices*, have been determined to be guilty of extortion.‡ And an undersheriff refusing to execute process before his fees were paid, has been held guilty of requiring what was *not yet due*.§ These instances are sufficient to show how a Coroner may become guilty "of this offence. The statute of Edward I. before noticed, which was made in affirmance of the common law, declares it to be extortion of any sheriff, or other minister of the King, whose office *any way concerns the administration or execution of justice, or the common good of the subject*, to take any reward, except what he receives from the King."

At common law, such offences were severely punishable Punishment. by fine and imprisonment, and removal from office; but by the statute just referred to, "extortion in sheriffs, escheators, bailiffs, gaolers, king's clerks of the markets, and other inferior ministers and officers of the King, whose offices do any way concern the administration or execution of justice," &c. are declared to be moreover punishable by "*yielding thereto as much*" (as each of such persons may have received, and to the party having paid it), beside the former punishment according to the common law.||

By the express words of their commission, the justices Sessions have cognizance of this offence of extortion; cognizance of therefore, as has been observed, the Coroner must be a extortion.

* 7 Term R. 52.

† Mod. Rep. 226.—Siderfin. 307.

‡ 2 Co. Inst. 210.—1 Hawk. c. 68.

† Co. Lit. 368.

§ Salk. 330.

suitor to this court for his legal and authorized fees, and *may* appear before them as a culprit, if he require more than the law allows; and let it be observed, that all who *aid in, or contribute to* the offence, are equally principals; for there are no accessaries in extortion.*

The Indictment.

The indictment must state the fact *particularly*, and the time when committed; but the magnitude of the sum is immaterial, for be it ever so small, it is equally an offence, which consists in the mere *taking*, not in the *value* of the contract.†

Little remains to be noticed respecting the superintendence of the sessions over the conduct of Coroners, and that little arising out of a very erroneous method, which has crept into practice of late years, of Coroners appointing Deputies, either generally, or specially. In some instances this has been rendered doubly unjustifiable, by the nomination of persons who are ignorant of the law. The office is a judicial one, and it may be a matter of serious doubt, whether its duties can be assigned to a deputy (properly so called) of any description.‡ Nor does such a delegation of authority appear to be more justifiable on the ground of convenience, than of law; for if the attendance of the Coroner of any particular county, or district of a county, be prevented by sickness or other unavoidable necessity, from attending when called upon, any neighbouring Coroner may legally supply his place; for although elected into office by the freeholders of a particular division of the kingdom, when instated into office he is “a Coroner throughout all England,” § and may attend *wherever* his services are

* 1 Str. 75.

† 1 Ld. Raym. 149.

‡ Staunf. P. 6. 51.—Wood's Inst. b. 4. c. 1.

§ Godb. 64.—Shaw. J. 359.—What has been advanced, from authorities of long standing, respecting the illegality of Coroners appointing deputies, and the additional impropriety of selecting for such deputies persons not conversant with law, was fully recognized by Graham (Baron), in his address to the grand jury of the county of Lincoln, at the summer assizes of 1814; such observations having been elicited by circumstances which had recently occurred in that county, but the more distinct mention of which would neither operate in illustration of, or add authority to, the learned Judge's comments.

required : but this must be understood of Coroners of counties, or divisions of counties only ; for “ those of exempt jurisdictions cannot interfere within the counties, out of their verge.” *

Cases may occur also, where the conduct of the Coroner may become the subject of enquiry, respecting the proper execution of his duty, relative to his *viewing* the dead body. Coroner not being able to view the body.

He can only take *his* inquisition of death “ upon *actual* view, and *not otherwise* ;” but he is, generally speaking, authorized to take such view any time within fourteen days, even though the body should have been interred.† Yet there may be instances, in which such exercise of his authority would be improper, as in those of sudden death accompanied by infectious disease. In such, and the like cases, the enquiry becomes one of the duties of justices of the peace, to whom it ought to be referred “ to enquire of the death,” as a view of the body is not necessary to *their* process.‡

In such instances, however, the investigation of the Coroner's conduct becomes a very proper subject for the court of session of the peace, (as otherwise bodies may be interred under suspicious circumstances, and frivolous pretences, without either *his* authority, or that of justices),§ and points out the *benefit*, at least, of his attendance upon the court, even though the *necessity* for it be strictly confined within the limits before mentioned, and justifies the observation of all the writers on the duties of Coroners, that it is in the

* 1 Hawk. 45.

† 2 Hawk. ib.—Bro. Coron. 167.

‡ 5 Rep. 110.—Hale, 170.

§ It has been already noticed that justices have a jurisdiction over the subject of sudden or unnatural deaths, to be exercised in cases to which the Coroner's cognizance does not extend, and *that* not by way of appeal from his judgment, but an original one ; therefore, it should seem, there need not, in *any* instance, be any failure of justice from the inability of the Coroner to attend. How far, and in what mode, justices may be *compellable* to give their services on such occasions, is a subject not within the limits of the present enquiry ;—but, that they may *legally*, seems to be as unquestionable, as that they may *profitably*, do it.
—1 Hale, 414.—1 Bur. R. 18.

power of justices in quarter session to fine the Coroner for non attendance on them.

**INDICTMENT OF A CORONER FOR REFUSING TO TAKE AN
INQUISITION.**

County of. { The jurors for our Lord the King present,
that on day of in the year
of the reign of our Sovereign Lord George, &c. &c. one A. B. at
. in the said county of was drowned and suffocated in
a certain pond, and of that drowning and suffocating then and
there died; and that the body of the said A. B. at afore-
said, in the county aforesaid, lay dead, of which one C. D. late
of in the county aforesaid, gentleman, afterwards, to wit,
on the said day of in the year aforesaid, then being
one of the Coroners of our said Lord the King for the county
aforesaid, at aforesaid, had notice; nevertheless the said
C. D. the duty of his office in that behalf not regarding, after-
ward, to wit, on the said day of in the year afore-
said, at aforesaid, in the county aforesaid, to execute his
office of and concerning the premises, and to take inquisition for
our said Lord the King, according to the laws and custom of the
realm, unlawfully, obstinately, and contemptuously did neglect
and refuse, and that the said C. D. no inquisition in that behalf
as yet hath taken, to the great hindrance of justice, in contempt of
our said Lord the King and his laws, and against the peace, &c.

Gaolers.

GAOLERS are the next in order of officers whose attendance upon the courts of quarter sessions is necessary; under which denomination are comprehended all persons who have the custody or superintendence of the prisons, to which the jurisdiction and cognizance of the sheriff, or the justices, of the county, extend; whatever may have been the usual title or appellation by which any of such gaolers may have been distinguished.

Their principal business is to bring the prisoners in custody who are to take their trials; vagrants who have been committed, and are either to be discharged or further imprisoned; to receive the passes of such as are to be carried by them to their respective places of settlement;* and to take charge of such other prisoners as may be committed to their custody by the court.

* 32 Geo. 3. c. 45. s. 5.

But there are other duties also prescribed by divers acts of parliament. For example, "if the master of every *house of correction* shall not at every quarter session, yield a true account of all persons that have been committed to his custody; or if any person committed to his custody shall be troublesome to the county, by going abroad, or otherwise shall escape away from such house of correction before he shall be lawfully discharged therefrom, the justices in such session shall set such fine upon him as they think fit, to be paid to the treasurer." * And by another statute, the justices in sessions are required "to call upon the Keeper of every *house of correction* within their jurisdiction, to produce to them in writing a list of the several persons then in their custody, with a description of the offence, and the time for which committed, distinguishing particularly those who by warrant of commitment are to be kept to hard labour, and also distinguishing the age and sex of every such person committed to hard labour, and in what trade or business he hath been employed, and what he hath been most accustomed to, and is best qualified for, and how he has behaved during his confinement.† And by a still more recent statute‡ "every Gaoler shall at the Michaelmas quarter session, yearly, deliver a certificate, signed and verified on oath *before such court*, (or in case of sickness or inability *before a justice*) expressing (after each of certain provisions there enumerated, and which are directed by previous statutes §) whether such provision is, or is not, complied with, or observed, within such gaol, and such certificate shall be read publicly in open court, in the presence of the grand jury, and entered on the records of the sessions." And the justices are further directed "to take such certificate into consideration, and to summon any such person named therein as shall seem meet; and every county Gaoler who shall neglect to deliver such certificate, shall forfeit 50*l.*, and every other not a county Gaoler 20*l.*, to be recovered in the courts of Westminster.

* 7 Jac. 1. c. 4.

† 22 Geo. 3. c. 64.

‡ 29 Geo. 3. c. 67.

§ See Pract. Expos. *tit.* GAOLER, sect. 2.

FORM OF THE CERTIFICATE.

Certificate to At the general quarter session of the peace for the said.
the Michaelmas holden at this. day of. in the year of our Lord
Sessions. the certificate of. in pursuance of the sta-
tute in this case made and provided respecting the gaol of.

By the statutes, also, for the relief of insolvent debtors, certain duties are imposed on Gaolers to be performed at sessions, which render their presence there necessary; as for example, by the very last statute of this kind,* they are required to deliver lists of the debtor prisoners in their custody, and to verify the same on oath, before the justices assembled.

The salaries of Gaolers, also, occasionally become the subject of the justices' cognizance in sessions, under certain circumstances, unnecessary to be noticed further, than by reference to the statute,† the present purpose being answered, by only shewing the multiplied occasions for their attendance at the sessions.

Constables. THE CONSTABLES, as well of hundreds, as of parishes,
are bound to attend the quarter sessions.‡ The Constables
Chief Constables, their duties. of hundreds, or chief Constables, to make return of the
warrants directed to them previous to the sessions, to receive the instructions of the justices, to make presentments relative to offences within their constablewicks, and to report the state of the King's peace within the same. Such at least are the *general* duties assigned to them *by the nature*, and *from the original foundation*, of their office. Beside these, however, innumerable others have, from time to time, been imposed upon them by statute, of an amount too considerable to be distinctly enumerated, to any profitable purpose *here*; as many of them, although more or less connected with their *attendance upon the sessions*, are to be executed *out of them*.§

* In the 54 Geo. 3.

† 24 Geo. 3. c. 54.

‡ Dalt. 185.

§ By way of example, and to show the inconvenient extent to which the particular notice of every law relative to these descriptions of duty,

The petty Constables are called over, and fined by the court if they do not attend. Their duties, relative to their parishes, are, in a great degree, similar to those of their chiefs respecting the hundreds, with some additional ones; such as reporting the state of their respective parish stocks, giving evidence respecting the execution of warrants where-with they may have been charged, and all other matters pertaining to their office, both as conservators of the peace, and as ministers of the justices.

The chief Constables are moreover directed by statute,* "at the general, or quarter, sessions, if thereunto required, to account for the general county rate by them received, on pain of being committed to gaol, until they shall account; and shall pay over the money in their hands according to the order of the said court, on the like pain. And all the accounts and vouchers shall, after having been passed at the said sessions, be deposited with the clerk of the peace, to be kept among the records, and inspected by any justice without fee."

They are also to deliver in the lists received from their petty constables of jurors, and to verify the same by oath. †

High, or chief Constables, are always chosen at some session, either special, general, or quarterly, in order that an officer, in whom all the acting magistrates of the county, or division, have so great an interest, he being their immediate servant, and auxiliary, in the preservation of the peace, and the link between them and all the petty constables throughout their jurisdiction, may have, if they think fit, a

To deliver lists of jurors from the petty Constables.

High Constables appointed and sworn at sessions.

would multiply these pages, one of them, by a recent statute, will be sufficient.

"Within ten days after every session at which any Justice shall have returned any conviction, whereon he has received any fine or forfeiture, the clerk of the peace or town clerk shall deliver to the chief Constable of the district where any person shall reside, who shall be entitled to any share of such fines, an account in writing of such fines, &c. which chief Constable shall transmit an account thereof to the petty Constable of the parish, that notice may be given to the person entitled, &c."—41 Geo. 2. c. 29.

* 18 Geo. 2. c. 29. & 55 Geo. 3. c. 51.

† 2 Geo. 2. c. 25.

voice in his nomination to the office. They are always sworn also into the office, either at some such session, or by warrant from the same.*

Petty Constables appointed &c. there.

Petty Constables, too, though sometimes appointed in courts-leet, according to ancient practice, and occasionally sworn into office either by the lord of such court, or by justices out of session, are now generally nominated by their respective parishes in vestry, and sworn into office by the justices at the quarter session, which is, on every account, the better and more regular mode.† It has also been decided, that the justices in session are the proper judges where it is right to appoint Constables for places that have not had any before.‡

Mandamus will lie to compel justices to swear Constables.

So necessary a part of the general system, for the preservation of the peace, are Constables, that the court of King's Bench will grant a *mandamus* to compel the justices to swear such as have been duly appointed;§ and if, on the other hand, a Constable duly chosen refuse to take upon himself the office and be sworn, he may be indicted at the sessions, (or assizes,) and if convicted, shall be fined.||

Oaths to be taken by High Constables.

High Constables are required to take the oaths of allegiance, supremacy, and abjuration, as others who qualify for offices;** but they are not required to receive the sacrament, or to subscribe the declaration against transubstantiation; and *petty* Constables are exempt from both species of test; but must take an *oath of office*, which has varied at different periods. That anciently in use has been preserved by Dalton, which it has been thought right to introduce here, only distinguishing such parts of it (*by Italics*) as have been superseded by modern statutes, or are become obsolete.

By Petty Constables.

You shall swear that you shall well and truly serve our Sovereign Lord the King, in the office of a Constable. You shall see and cause his Majesty's peace to be well and duly kept and preserved according to your power. You shall arrest all such

* Dalt. c. 28.

† 1 Keb. 554.

‡ 2 Str. 928.—Cro. Car. 567.

† 2 Hawk. c. 10.

§ 2 Hawk. c. 10.

** 1 Geo. 1. c. 2.

persons as in your sight and presence shall ride or go armed offensively, or shall commit, or make any riot, affray, or other breach of his Majesty's peace. You shall do your best endeavour (upon complaint to you made,) to apprehend all felons, barrators, rioters, or persons riotously assembled:—And if any such offenders shall make resistance (with force) you shall levy hue and cry, and shall pursue them until they be taken.—You shall do your best endeavours that the watch in, and about, your town be duly kept for the apprehending of rogues, vagabonds, night-walkers, eve-droppers, and other suspected persons, and of such as go armed, and the like: And that hue and cry be duly raised and pursued, according to the statute of Winchester, against murderers, thieves, and other felons: And that the statutes made for the punishment of rogues and vagabonds, and such other idle persons, coming within your bounds and limits, be duly put in execution. You shall have a watchful eye to such persons as shall maintain or keep any common house, or place where any unlawful crime is used: As also to such persons as shall frequent or use such places, or shall use or exercise any unlawful games, there or elsewhere, contrary to the statutes. At your assizes, sessions of the peace, or leet, you shall present, all and every, the offences done contrary to the statutes made to restrain the inordinate haunting and tippling in inns, alehouses, and other victualling houses, and for redressing drunkenness. You shall there likewise true presentment make of all blood-sheddings, affrays, outcries, rescous, and other offences committed or done against the King's Majesty's peace within your limits. You shall, *once every day, during your office, present, at the quarter sessions, all popish recusants within your parish, and their children above nine, and their servants, (i. e. their monthly absence from the church.)* And you shall have a care for the maintenance of archery, according to the statute. You shall and duly execute all precepts and warrants to you directed from the justices of peace of this county, or higher officers. You shall be aiding to your neighbours against unlawful purveyances. In the time of hay or corn harvest (upon request) you shall cause all persons meet to serve by the day, for the mowing, reaping, and getting in of corn or hay. You shall in Easter week, cause your parishioners to chuse surveyors for the mending of the highways in your parish. You shall, *have a care that the malt made or put to sale in your town be well and sufficiently made, trodden, formed, and dressed:* And you shall well and duly, according to your knowledge, power, and ability, do and execute all other things belonging to the office of Constable so long as you shall continue in this office. So help you God.

If occasion should at any time arise for imposing upon Constables any particular portion of their general duty, there can be no doubt, but the foregoing oath, at least with the omission of such parts of it as have been pointed out,

may be legally, perhaps opportunely and profitably, administered. But the usual practice now is, to swear the Constables, generally, to the due performance of their office according to the following form.

I will well and truly serve our Sovereign Lord the King, in the office of Constable in and for the hundred of. (or township of B. or parish of C.) in the county of. according to the best of my skill and knowledge, for the year ensuing, and till another be appointed in my place.* So help me God.

Fees of Constables submitted to the justices in sessions.

In felonies.

In parochial business.

Fined for non-attendance.

In particular instances, the quarterly sessions have cognizance of the fees of Constables for the execution of certain parts of their duty. *Special Constables* are entitled to a reasonable remuneration for their services in executing warrants in cases of FELONY, to be allowed by two justices, subject to the confirmation of the justices at the next quarter session, whose order on the treasurer of the county for payment is necessary. And by a similar mode of proceeding, *high Constables* are to be remunerated for extraordinary exertions in cases of TUMULT, RIOT, or FELONY.†

Also in the execution of PAROCHIAL BUSINESS, Constables, and all persons acting in the capacity of Constables, having delivered their accounts to the overseers of the poor of their respective parishes, are placed ultimately under the controul of the justices in session, respecting the liquidation of such accounts, where any dispute or difference of opinion arises upon them. And the justices so assembled have moreover a power of laying down any rules and regulations *prospectively*, respecting such allowances to Constables generally for such occasions, subject to the approbation of the judge of assize.‡

All Constables duly appointed who neglect attending at the sessions, or answering when their names are called over, are subject to be fined at the (reasonable) discretion of the Court.§

* The office of Constable is an annual one, and the sessions may relieve a person from longer service.—13 & 14 Car. 2. c. 12.

† 41 Geo. 3. c. 78.

‡ 18 Geo. 3. c. 19.

§ Cro. Cir. Comp. 34.

In such manner as Constables are *appointed*, and by the Removal of Constables. like authority, they are to be *removed*. So that if there be cause to remove an high Constable, it ought not to be done by a single justice or two, but at the quarter session, or at least at a special session, where all the justices for the district may have an opportunity of giving their opinions.*

And for similar reasons the sessions have power to remove *all* Constables on proper cause.†

And it is provided by statute, that if a petty Constable Discharged after a year's service. continue above a year in his office, the justices in session may discharge him and put another in his place.‡ And if the court refuse to discharge, a writ of *mandamus* will lie.§

The office of Constable being principally a ministerial May appoint a deputy. office, he may appoint a deputy on any occasion to do a mere ministerial act, and this extends to all sorts of Constables;¶ and so far as regards petty Constables (who are frequently women, or persons incapable from age and infirmity) they may appoint deputies to do the *whole* business of their office; but then such deputy must be accepted and sworn by a proper authority; in which case he must make all appearances for his principal, and execute all the acts of his office; for by the acceptance and swearing of the deputy, the principal is discharged from responsibility.**

THE JURORS are of course necessary attendants upon General and Quarterly Sessions, for the trial of prisoners. The proceedings, oath, misbehaviour, and punishment of Jurors, are subjects which come more properly under consideration in the succeeding chapter; but their qualifications, exemptions, and the process for convening them, belong peculiarly to this.

Juries are distinguished also into Grand, and Petit (or Grand Jury. Petty) Juries. Grand Juries must consist of thirteen at least, but not of more than twenty-three: of not less than thirteen, because every bill must be found by *twelve at least*; of not more than twenty-three, lest there should be an

* Dalt. c. 28.

† 13 & 14 Car. 2. c. 12.

‡ 3 Barr. R. 1259.

§ 2 Hawk. c. 10.

¶ 2 Hawk. c. 10.

** 3 Esp. R. 56.

equal division of opinions, in which event no bill could be found.

Now returned. Upon the summons of one of these sessions of the peace, there goes out a precept under the hands and seals of two justices of the county, division, &c. directed to the sheriff, upon which he is to return twenty-four *or more* out of the whole county, division, &c. out of which the grand inquest is to be taken. They must be "*good and lawful men*," or, in other words, liege subjects of the King, neither aliens, nor persons outlawed upon civil actions; nor attainted of any treason or felony; nor convicted of any species of crime which renders them infamous, as conspiracy or perjury. For if any one of them lie under any of these disqualifications, he may be challenged by the prisoner before bill presented; or if not discovered till after the finding, the defendant may plead it in avoidance, and answer over for the felony.* So much is clear, respecting the qualification of grand Jurors with regard to their purity of social and civil character.† These qualifications respecting property, are not so clearly defined *by law*, whatever they may be by custom and usage.

"They *ought*, certainly," says Blackstone, "to be freeholders,‡ but to what amount is uncertain." With this *doctrine* the uniform *practice* is conformable, but the foundation of both being deducible from privileges appertaining to feudal antiquity alone, it is not necessary to enter further into the subject here.§ It is also necessary that they should be *inhabitants* of the county for which they are sworn to enquire,|| except in excepted cases; but those exceptions being special, though now numerous, and by acts of parliament, are of themselves sufficient proof of the common law rule.** What may be considered such an *inhabitancy*, as will bring a person within the description of those proper to be summoned, is no new question of discussion. It has arisen from the returns of petty constables "of person qualified to serve as Jurors," comprehending the names of great freeholders, not being residents,††. But as the sum

* 11 Hen. 4. c. 9.

† 4 Com. 302.

|| 13 Edw. 1. c. 38.

†† 27 Eliz. c. 7.

† 2 Hale, 154.

§ Co. Lit. 156.

** 4 Black. Com. 303.

mons which requires the attendance of the freeholder founded upon that return, is. required to be "left at *his dwelling house*," * and as the sheriff of the county can have no authority to direct a summons to be served on any person beyond the limits of his own proper bailiwick, the doubt seems to be fully resolved, † by only considering the order of the processes. If any errors have crept in however, it seems agreed, (and this as well with respect to grand, as to petit Jurors) that courts of session of the peace, as well as those of Assize, have power to reform the panel, by ordering the names of objectionable persons to be omitted, and those of others to be inserted.‡ And it is even said, that this power of removal extends to a Juror who has been sworn, on the discovery that he is an improper person.§

In point of fact, nothing is more common than, when the names of a grand jury of a session of the peace are called over, for the court to direct all those to be omitted who reside in any particular parish, from which any prosecution comes, which may be likely to influence the passions, or to interest the prejudices, of the inhabitants.

Of the grand Jurors returned to the quarter session, it is not an unusual practice, after 15 or 16 names have been called, to consider the inquest as complete, and not to insist upon the remainder, who may happen to be present, serving.

A Petit Jury can only consist of twelve, and must be precisely that number, all of whom must agree in the verdict given; but they are taken by ballot out of the whole number returned, which is usually forty-eight, (subject to challenge to be noticed hereafter) although the precept commonly requires only twenty-four, but the award or precept to try a prisoner after he hath pleaded, is only *venire facias* twelve, and twenty-four are returned upon that panel. ||

"And, to the end that sheriffs may be the better informed of persons fit to be returned on juries, the justices at the

Petit Jury.

Returning
lists.

* 7 & 8 Wm. 3. c. 32.

† See *post*, p. 68.

‡ 11 Hen. 7. c. 24.—1 Hen. 8. c. 11.—3 Hen. 8. c. 12.

§ Lamb, 400.—1 Shaw, 632.

|| 2 Hale, 263.

Precepts to the high and petty constables to make and return lists of Jurors.

Quarter Sessions next after the 24th June, shall issue forth their warrants under the hands and seals of two or more of them, to the high-constables, requiring them to issue forth their precepts to the petty constables, thereby directing and requiring them to meet together with the head constables, within fourteen days next after, at some usual place, where the petty constables shall prepare and make a true list, fair written, and signed by them, of the names and places of abode, of all persons within their respective constablewicks, qualified to serve on juries, with their titles and additions, between the ages of twenty-one and seventy: and any head constable failing to issue forth his precepts as aforesaid shall forfeit 10*l.* and every petty constable failing to meet the head constable, and failing to prepare and make a true list, shall forfeit 5*l.* and every such offender shall be prosecuted at the general assizes, sessions of oyer and terminer, or general gaol-delivery, or sessions of the peace. *

Petty constables may inspect parish rates.

And the petty constable shall, on request to any parish officer, who shall have in his custody any of the rates for the poor, or land tax, have liberty to inspect such rates, and take the names of such persons qualified, *dwelling within their precincts.*

Lists to be put on the church doors.

And shall yearly, twenty days at least before Michaelmas, upon two Sundays, fix upon the door of the church, within their precincts, a list of all such persons intended to be returned to the Quarter Session, and leave a duplicate of such list with the church-warden or overseer of the poor.

And persons not qualified struck out.

And if any person not qualified shall find his name mentioned in such list, and the person required to make such list shall refuse to omit him, the justices at their Quarter Session, on satisfaction from the oath of the party complaining, or other proof, shall order his name to be struck out.

Penalty on constable inserting names wrongfully.

And if any person required to make up such list, shall wilfully omit any such person whose name ought to be inserted, or insert any who ought to be omitted, or shall take any reward for omitting or inserting any person, he

* 8 & 4 Anne, c. 18.

shall for every person so omitted or inserted, forfeit 20s. on conviction before one justice, on the confession of the offender, or proof by one witness on oath; one half to the informer, the other half to the poor of the parish; and if the penalty shall not be paid within five days, it shall be levied by distress and sale of goods, by warrant from one justice. And the justices before whom such person shall be convicted, shall certify the same to the next Quarter Session, which shall direct the clerk of the peace to insert or strike out the name." *

Which list the said petty constables shall yearly on pain of 5*l.* return and give to the justices in open court, upon the first day of the General Quarter Session to be holden in the week after Michaelmas. †

Return of
lists by petty
constables,

Or instead of this, "it shall be sufficient for them, after they have completed the lists for their precincts, to subscribe the same in the presence of one justice, and at the same time to attest the truth of such lists upon oath, to the best of their knowledge and belief; and the lists shall, being signed by the justices, be delivered by them to the high-constables, who are to deliver in such lists to the Quarter Sessions, attesting upon oath the receipts of such lists from the petty constables, and that no alteration hath been made since the receipt thereof." ‡

or through
the chief
constables.

The justices shall then cause the lists to be fairly entered in a book, and kept among the records of the Sessions. §

To be entered
in a book.

And duplicates of the lists, so delivered and entered at the sessions, or within ten days after, shall be transmitted by the clerk of the peace to the sheriff. ¶

Duplicates
to be trans-
mitted to the
Sheriff.

Constable failing to make return shall forfeit 5*l.* to the King, to be recovered by bill, plaint, or information.**

Constable
failing to
make return.

And if any person not qualified shall be returned, the justices in session may, on being satisfied by the oath of the party, order his name to be struck out, or omitted to be entered in the book. ††

* 3 Geo. 2. c. 25.

† 3 & 4 Anne, c. 18.

‡ 3 Geo. 2. c. 25.

§ 7 & 8 Wm. 3. c. 32.

¶ 3 Geo. 2. c. 25.

** 7 & 8 Wm. 3. c. 32.

†† 3 Geo. 2. c. 25.

Qualifica-
tions of Jurors
by estate
generally.

" All Jurors (other than strangers upon trials *per medietatem linguæ*) to be returned for trials of issues joined before justices of assize or nisi prius, oyer and terminer, gaol delivery, or *Quarter Sessions*, in any county of England, shall have within the county 10*l.* by the year of freehold or copyhold, or ancient demesne, or in rents, in fee-simple, fee-tail, or for life; and in every county of Wales, every such Juror shall have 6*l.* by the year as aforesaid; and if any of a lesser estate be returned, he may be discharged upon challenge, or on his own oath." *

" And persons having an estate in possession in land in their own right of 20*l.* a year above the reserved rent, being held by lease for 500 years or more, or for 99 years, or any other term, determinable on one or more lives, shall be liable to serve on juries." †

In Yorkshire.

" But no person having such estate as will qualify him to serve on Juries, of the yearly value of 150*l.* or more, shall be returned to serve upon any Jury upon any *session of the peace* for any part of the county of York, upon pain of 20*l.* to be recovered for the use of the informer in any court of record at Westminster by action. ‡

" And if any such person shall serve as a Juror at any of the said sessions, he shall not be thereby exempted from serving at the *assizes* for the county of York." §

In other places.

There are various other provisions for particular jurisdictions, by divers acts of Parliament, not necessary to be particularized here. The substance, however, of all the regulations, as they affect ordinary proceedings at sessions of the peace at this day, seems to be this. In order to qualify and subject a person to serve on a jury, he must have within the said county 10*l.* *per annum* in England, and 6*l.* in Wales, in freehold, or copyhold, or ancient demesne, or in rents in fee-simple, fee-tail, or for life; or have in possession leasehold property to the amount of 20*l.* *per annum*, above the reserved rent, for 500 years, or for some term determinable on a life or lives; if in Middlesex, an improved rent to

* 4 & 5 Wm. 3. c. 24.

† 3 Geo. 2. c. 25.

‡ 1 Anne, st. 2. c. 13.

§ 10 Anne, c. 14.

the amount of 50*l.* for *any* term. In towns, boroughs, and cities, he must be possessed of personal property to the amount of 40*l.*; and in London, he must have real or personal estates to the value of 100*l.* and be a householder within the city.*

Jurors not appearing according to their summons, are punishable by fine, to be levied by warrant of distress, according to statute, and if by common law by forfeiture of the issues returned upon them.†

It is scarcely necessary to examine with particular minuteness, what persons, among the higher orders of society, may claim an exemption from serving on grand juries at the sessions, as it is not the practice to summon any such as are on the sheriff's list to be summoned for the assizes; but it is understood to be a general rule, that members of either House of Parliament, barristers, attornies, medical persons actually practising their profession, and clergymen of the establishment, shall be exempt from serving.‡ Persons above 70 years of age, and those who are sick and decrepit, § as well as those under 21 years of age; || dissenting teachers, having qualified under the toleration acts; ** quakers; †† Roman catholic ministers; ‡‡ and visitors of work-houses; §§ are severally exempt by statute; and the following descriptions of official persons claim a similar prescriptive privilege;—coroners, verdurers, foresters, officers of the army and navy, and persons in trust under government, whose duties require personal attendance. |||

The only remaining consideration on the subject of juries, to be introduced in this place, is the remedy which resides in the court, to enable it to proceed in the execution of its duties respecting the trials of prisoners, in the ex-

* 23 Hen. 8. c. 3.—4 & 5 Wm. & Ma. c. 24.—3 Geo. 2. c. 25.

† 3 Geo. 2. c. 25.—29 Geo. 2. c. 19.

‡ Lamb. 396.—3 Black. Com. 364.

§ 13 Edw. 1. c. 58.

|| 7 & 8 Wm. c. 32.

** 1 Wm. c. 18.—19 Geo. 3. c. 44.—52 Geo. 3. c. 155.

†† 7 & 8 Wm. c. 34.

‡‡ 31 Geo. 3. c. 32.—43 Geo. 2. c. 30.

§§ 22 Geo. 3. c. 83.

||| 3 Bac. Ab. 261.

emptions or disqualifications, or both together, being so numerous, as not to leave a sufficient number of the Jurors returned by the sheriff, to compose a Jury.

On this subject some conflicting and indistinct opinions are scattered through the books which are the usual sources of legal information,* but the uniform practice is that which the expediting of justice, and the necessity of the case, suggest; viz. for the court to call upon the sheriff or his representative *ore tenus* to return a Jury *instantèr de circumstantibus*; † which Jurors so returned are individually subject to challenge by the same parties as persons returned after any other manner. If any thing were wanting, in addition to what has been insisted on in a former page, to demonstrate the propriety of the sheriff's attendance upon every court of session, either in person, or by some respectable substitute, the representation of this part of his occasional duty would be sufficient for the purpose; it being neither consistent with the dignity of a court of criminal jurisdiction, nor with the solemn responsibility attached to the selection of Jurors, that such a duty should be left, as is too commonly the case, in the hands of a bailiff, or other subordinate officer of the sheriff for the time being.

Suitors, who
so considered.

SUITORS OF THE COURT, is an appellation which, in its restricted sense, may be supposed to signify only those who have some voluntary suit to prefer;—but in its colloquial, as well as legal, application, it is descriptive of all persons who have any duty to perform, or any *necessary business* to execute, voluntary or official, before the Court.

Under this larger description are comprehended all prosecutors, whether voluntary, or bound by recognizance; as also all those bound to answer, and those to give evidence.

Suits, how
prosecuted.

It is said generally, that *all offences* shall be prosecuted at the sessions by presentment, information, or indictment. ‡ But if jurisdiction be given to the sessions, to *hear and determine*, and it be not said “by information,” it shall be

* See 1 Chit. C. L. 507, & seq.

† Harg. St. Tr. 744.—Fost. 25. 64.—& 2 Hale, 410.

‡ Com. Dig. tit. Justice.

understood that the prosecution is to be by indictment, and not information.* And for all crimes within the cognizance of the Sessions of the Peace, the justices may grant their warrant against offenders, and either commit them, or bind them over to appear, as the case may require.† The latter is done by recognizance after the manner following, or in similar substance.

County of..... { Be it remembered that on the Recognizance
(to wit.) { day of in the year of our Lord to prosecute,
..... A. B. of in the county of labourer, &c.
(or as the proper addition is) came personally before me W. D. Esquire, one of his Majesty's justices of the peace, in and for the county of aforesaid, and acknowledged himself to be indebted to our said Sovereign Lord the King in the sum of £..... of good and lawful money of Great Britain, to be levied of his goods and chattels, lands and tenements, by way of recognizance to his said Majesty's use, upon condition that if the above bounden A. B. shall personally appear at the next general (or general quarter) session of the peace to be holden in and for the said county at and then and there prefer a bill of indictment against C. D. late of butcher, (or as the proper addition is) and shall then and there give evidence concerning, (or in the case of a witness only, shall give evidence concerning) the same to the Jurors, who shall enquire thereof on the part of our said Lord the King, and not depart without leave of the court, then this recognizance to be void, otherwise to remain in full force.

Taken and acknowledged before me the day and year aforesaid.
W. D.

County of..... { Be it remembered that on the Recognizance
(to wit.) { day of in the year of our Lord of bail to ap-
..... A. B. late of in the county of pear and an-
labourer, C. D. the elder, and C. D. the younger, both of swer to indict-
in the county of shoemakers, personally came before us, ment.
W. D. Esq. and the Rev. D. P. Clerk, two of his Majesty's jus-
tices of the peace in and for the county of aforesaid,

* Dalt. c. 191.—4 Term R. 115.

† 1 Hale, p. 6. 108. 110.—4 Black. Com. 290.—To the extent in which it is here laid down, this doctrine had been doubted, and the power of Magistrates out of Session to issue warrants against, and to demand bail from, any offenders, except for treasons, felonies, breaches of the peace, or misbehaviour directly tending thereto, questioned.—The doubt, however, seems to have been set at rest in 1817, and the power of justices out of Sessions as here recognized, established.—See 3 Dick. Pract. Expos. titles, BAIL, & LIBEL.

and severally and respectively acknowledged themselves to be indebted to our Sovereign Lord in the manner and form following, that is to say, the said A. B. in the sum of twenty pounds of good and lawful money of Great Britain, and the said C. D. the elder, and C. D. the younger, in the respective sums of ten pounds each, of like good and lawful monies, to be respectively levied of their goods and chattels, lands and tenements, to the use of our said Sovereign Lord the King, his heirs and successors, if the said A. B. shall make default in the performance of the condition under-written.

Now the condition of this recognizance is such that if the above bound A. B. do and shall personally appear before the Justices of our said Sovereign Lord the King, assigned to keep the peace in and for the said county of, and also to hear and determine divers felonies, trespasses, and other misdemeanors within the said county committed, at the next General (or General Quarter) Session of the peace to be holden in and for the said county of at in the same, then and there to answer our said Sovereign Lord the King for and concerning the felonious taking and stealing a certain (mentioning the article) the property of X. Y. wherewith the said A. B. stands charged on suspicion before (the Justice who committed the offender), and do and receive what by the court then and there shall be enjoined him, and shall not depart without the court without leave or license; then the above written recognizance shall be void and of none effect, otherwise to remain in full force.

Taken and acknowledged as above written before us

W. D.
D. P.

Recognizance,
how to be
attested.

To which recognizances the justices are to subscribe their names respectively; but the persons bound need not set their names to it, for it is witnessed only by the record, and not by the party's seal.*

In matter of
record.

And a recognizance taken by a justice of peace is a matter of record, so soon as it is taken and acknowledged, although it be not made up, but only entered in his books.†

To be certified
to the next
session.

“And every justice that shall take any recognizance for the keeping of the peace, shall certify the same to the next session, that the party bound may be called; and if he make default, the same default shall be recorded, and the recognizance, with the record of the default, be sent and certified into the *Chancery, King's Bench, or Exchequer*.”‡

* 2 Black. Com. 341. † Dalt. 168. ‡ 3 Hen. 7. c. 1.

The condition which is expressed in the recognizance (to prefer an indictment, or to give evidence on an indictment, or to plead to an indictment), made applicable to the persons respectively who are to be bound, being the principal variation in the form as applied to the different parties, viz. the prosecutor, the witnesses, and the offender, the foregoing precedents *mutatis mutandis*, are those by which they are brought before the court, remarking by the way only that the recognizance of the prosecutor is usually (though not necessarily) without pledges, and that the recognizance for bail in manslaughter, felony, and suspicion thereof, must be taken before two justices except in Middlesex, London, and other great cities and towns corporate. *

It is not necessary, however, and in some offences would be positively irregular (as *ex. gr.* in perjury, although under the stat.) † to bring the party charged before the session under a Justice's warrant, previous to a bill of indictment having been found. The manner of proceeding in this respect must necessarily depend much on discretion, and the nature of the offence. For all treasons, homicides, and other felonies, actual breaches of the peace, and acts having a *direct* tendency thereto, it is usual, as it is right and reasonable, to secure the person of the offender for trial by means of the warrant of a justice; so perhaps in instances of great public enormity, and of great personal injury, even though they do not come strictly within the above description; and also where the offender has no fixed or permanent residence, and there may be a strong probable reason for presuming that he designs to elude justice by absenting himself; ‡ under all these and similar circumstances, an immediate detention of the offender's person may be no less suggested by discretion, than sanctioned by practice. But in cases of conspiracy, libel, extortion, and other misde-

Not all offenders to be brought by warrant before the session previous to indictment.

* 1 & 2 Ph. & Mar. c. 13.

† It is laid down, indeed, by Dalton, that a Justice may bind over a party accused of perjury to the sessions for trial, but such a proceeding is contrary to all practice.—Dalt. c. 70.

‡ See Note, *ante*, p. 73.

meanors, wherein there is no actual breach of the public peace; or wherein, if there be a tendency to such breach, it is only indirect or remote; the usual and the more discreet practice is to prefer an indictment before a grand jury, and if found, to make that the foundation of all ulterior proceedings. *

Witnesses.

Having considered then how prosecutors and offenders are brought before the court, it only remains to notice the processes by which witnesses are compelled to attend.

When any offender is brought before a justice by warrant, or otherwise, for felony, or breach of the peace, beside the informant, and any witnesses who may happen to be voluntarily present, (and whom it has already been seen it is the duty of the examining justice to bind by recognizance to appear at the session) there may be others known to him, whose testimony may be necessary, or at least useful, on the occasion.† These the justice *may* issue his *warrant* to bring before him, to be examined touching the matter in question, in the following or the like form: ‡ but it is more common, in the first instance, especially if they be respectable persons, to make it only a summons, which may be done either by a notice addressed to the person whose presence is desired, or by substituting the word *summon* for that of *cause*, in the precedent here presented. §

County of. . . }
(to wit.) } To the Constable of

Warrant for.

Whereas oath hath been made before me, W. D. Esquire, one of his Majesty's Justices of the Peace in and for the said county,

* In which case a process, denominated a *Bench-warrant* issues, for which, see the next chapter.

† See Practical Expos. *title* EXAMINATION.

‡ Dalt. c. 164.

§ If the offence be neither a felony, nor a breach of the peace, there may be considerable doubt respecting the power of a justice to grant a *warrant* for the production of testimony. The 2 & 3 P. & M. extends only to examination for manslaughter and felony; and no direct authority seems to be given by any subsequent statute, and necessity cannot be pleaded for extending the power beyond the preservation of the public peace. For all other offences the subpoena of the clerk of the peace, previous to trial, appears amply sufficient to provide against failure of justice.

by P. Q. of that the said P. Q. was lately robbed (*or other offence committed, as the case may be*) at and that he hath good cause to believe that X. X. of is a material witness to prove by whom the said robbery was committed: these are therefore to require you to *cause* the said X. X. forthwith to come before me, to give such information and evidence as he knoweth concerning the said offence, that such further proceedings may be had therein as to the law doth appertain. Given under my hand and seal at in the said county, the day of

If his evidence be found by the justice on examination *Contumacy*. to be material, he must then be bound by recognizance, like the rest, to attend at the session of the peace, and give it to the court and juries there, in like form, varied only according to the circumstances of the offence; and if he refuse to enter into such recognizance, the justice may commit him to gaol;* wherein, if he obstinately continue till the session, he may be brought up to the court by writ of *habeas corpus ad testificandum*.†

Lord Preston, being committed by the court of quarter session for contempt in refusing to be sworn to give evidence to the grand jury, on an indictment of high treason, he was brought by *habeas corpus* into the Court of King's Bench; and Holt, Chief Justice, said, it was a great contempt, and that had he been there, he would have fined him, and committed him till he paid the fine; but being otherwise, he was bailed.‡

The process to bring before the grand jury or court such *Subpoena*. witnesses as have *not* been bound by recognizance to appear, whether on the part of the prosecution, or for the defendant, is by subpoena; which, whatever might have been the law in former times, § is now to be obtained in all cases whatsoever; || for the assizes, from the crown office; for the sessions, from the clerk of the peace, *or* from the crown office. And the service of a subpoena issued out

* 1 Hale's H. 586.—Bennet & Uxor v. Watson, 3 M. & S. R. 1.

† 31 Car. 2. c. 2.—44 Geo. 3. c. 102.

‡ Salk. 278.

§ 2 Hawk. 46.

|| 2 Wm. 3. c. 3.—1 An. c. 9; 4 Black. Com. 359.—Hawk. b. 2. c. 46.

of any court of competent jurisdiction, is declared to be equally good, with service in the particular county where the party is required to attend; * disobedience to it is punishable by the court of B. R.

Witness in
prison.

In order to obtain the writ of *habeas corpus ad testificandum*, for a witness in prison, an affidavit must be made by the party applying, stating the confinement of the person whose evidence is wanted, that he is a material witness, that the trial cannot safely be proceeded in without his presence, and that it is about to take place at a certain time and place, with such other circumstances (if required) as may show the necessity for the application. It may be granted by any one of the judges of the superior courts in England and Ireland, and by those of the courts of Great Sessions in Wales and Chester respectively, to the extent of their respective jurisdictions. † It is to be served on the person in whose custody the party is detained.

THE FORM OF A SUBPENA TO GIVE EVIDENCE AT THE QUARTER SESSION.

George the Third, by the grace of God, of the United Kingdom of Great Britain and Ireland, King, Defender of the Faith, to A. B. C. D. E. F. and G. H. (*not putting more than four in one subpoena*), greeting: we command you, that all and singular business and excuses being laid aside, you, and every one of you, be, and personally appear in your own proper persons, before our Justices assigned to keep the peace, in and for our county of and also to hear and determine divers felonies, trespasses, and other misdemeanours, in the said county committed, at the General Quarter Session of the Peace, to be holden at in and for the said county, on Wednesday the day of at the hour of in the forenoon of the same day, to testify the truth, and give evidence before the grand inquest touching a bill of indictment to be preferred against in a case of trespass and assault.

Or, if it be to give evidence for the prosecution, say,

On our behalf against in a case of trespass and assault.

If for the defendant, say,

Between us and in a case of trespass and assault.

* 45 Geo. 3. c. 92.

† 44 Geo. 3. c. 102.

Or if the King is not a party, say,

In a certain appeal now depending between the churchwardens and overseers of the poor of the parish of A. appellants, and the churchwardens and overseers of the poor of the parish of B. respondents, touching and concerning the removal of C. D. from the said parish of B. to the said parish of A.

And then proceed,—

And this you, or any of you, are by no means to omit, under the penalty upon each of you of 100*l*. Witness at aforesaid, the day of in the year of our reign.

Y. Z. Clerk of the Peace.

If the party subpcœnaed be supposed to be in possession *Duces tecum*. of any documents necessary to the elucidation of the matter in controversy, a special clause, called a *duces tecum*, is to be inserted, requiring him to bring such documents with him.

This subpcœna is made out by the Clerk of the Peace, and each of the witnesses must be personally served, either with a copy, which is now most usual, or with a notice in the following form:—

To Mr. A. B.

By virtue of his Majesty's writ of subpcœna to you directed, and herewith shewn unto you; you are personally to be and appear before his Majesty's Justices, &c. [pursuing the form of the subpcœna, as far as the words '*in a case of*....;'] and this you are not to omit, under the penalty of 100*l*. Dated this.... day of in the year of the reign &c.

THE FORM OF A WRIT OF HABEAS CORPUS AD TESTIFICANDUM TO GIVE EVIDENCE AT THE COURT OF QUARTER SESSION.

George the Third, &c. to the Sheriff of greeting:
We command you, that you have the body of A. B. in our prison under your custody, as it is said detained under safe and secure conduct; by whatsoever means the said A. B. may be called on the same, before our justices assigned, &c. of the General Quarter Session of the Peace, to be holden at in and for the said county, on &c. then and there to testify the truth, and give evidence on our behalf before the grand inquest, touching a bill of indictment to be preferred against, &c. &c. (*as the case may be*) and immediately after the said A. B. shall have then and there given his testimony before our said justices, to return him

the said A. B. to our said prison under safe and secure conduct, and have you then there this writ. Witness in the year of the reign, &c. &c.

This is all that is necessary to be advanced, in this state of the proceedings before the court of quarter session, respecting the attendance of witnesses; especially as the subject resolves itself into other points of consideration in a subsequent page.

The last subject of enquiry under this division is, what privileges or immunities the protection of the court confers upon suitors of every description, as auxiliary to the advancement of public justice.

All persons
protected have
business.

And it is universally laid down, that all persons may freely attend at the sessions, for the advancement of public justice, and for the service of the King; and to this end, they are, as it were, invited thither by a certain freedom of access, and by protection from common arrest in civil actions, a thing that is incident to every court of record, and without which, justice would be greatly hindered; * so that if a man come voluntarily to the sessions, either to prefer a bill of indictment, or to give information against another, or to tender a fine upon an indictment touching himself, or come compelled to make appearance for saving his recognizance, and be arrested in his coming thither, or during his tarrying there, or on his return, it seems that *upon examination of the matter under his oath*, he shall be discharged thereof by the privilege of the court of session, the same as in the Courts of Westminster. †

But to have this privilege the party must appear in person, that the court may examine him, and be satisfied upon his oath, that he was either prosecuting, or defending, some suit pending in that court, when he was arrested. †

* By the annual mutiny act there is a special provision for witnesses being privileged from arrest, who are summoned to attend upon courts martial, "in like manner as witnesses attending any of his Majesty's Courts of Law are privileged."

† Lamb. 442.—2 Str. 987.

† Ibid.

Moreover, upon the principle of furthering justice, and Privilege of person interpreted liberally. even holding out invitation to all persons to attend the courts, great latitude has been allowed in construing the extent to which this privilege of their person shall be carried. Thus, a man shall not be required, when going to a session, to proceed in the direct road, and the protection is not forfeited by the allegation, that he went out of the way, because it may be, the party went to buy a horse, victuals, or other necessaries for his journey. Neither is the law so strict in point of time, as to require a person to set out immediately after the trial is over; for where a woman had a trial at Winchester assizes, which was over at four in the afternoon, and she staid there till after dinner on Saturday; and in the evening at seven, was arrested going home to Portsmouth, which is twenty miles, the court held that she ought to be discharged, her protection not being expired, and a little deviation, or loitering on the way, would not cancel it.*

And indeed of late years, in all cases where this privilege of person in attending judicial proceedings of all kinds has come in question, the decisions have been uniformly favourable to its extension.†

But it seems that if a man be arrested by process out of the Courts at Westminster, the sessions have no power to discharge him, unless he be so arrested in the face of the Court, ‡ which would be a contempt, and punishable accordingly.

Neither shall a man who attends the court without any sufficient cause, to do a mere voluntary act there, be privileged in going and returning: as if a defendant go to the court to confess an indictment, for there is no occasion, and no process which should compel him to attend.§

PLEADERS. Every man has a natural right to defend Person pleading his own cause. himself, or plead his own cause, which no municipal regulation can deprive him of, without manifest injustice. Whether it may be more prudent for each individual to

* 2 Str. 987.

‡ 2 Hawk. c. 1.

† 3 East. R. 89.—8 Term R. 534.

§ Salk. 544.

Advocates.

exercise that right, or to entrust his protection to other hands, he, and he alone, ought to have the privilege of determining.* But where the suitors of courts seek for assistants to advocate their interests, all courts have claimed, and apparently with reason on their side, the right of making regulations, on the condition of complying with which, such advocates should be admitted to plead. In the courts of quarter session, this privilege has been confined, and very properly, to gentlemen of the legal profession; Barristers, and Attorneys. Where the former can be obtained, it has been usual "as the phrase goes," to "silence" the latter; or in other, and more respectful, words, to prefer and encourage the superior order.†

This preference may have been originally liable to some

* It has been a common observation in the courts, that "the man who advocates his own cause, has a fool for his client." There is much levity, but some truth, in the observation, and especially when applied to such persons as are in general the suitors of the court of quarter session; because both ignorance and prejudice commonly unite to prevent them from discovering the strong points of their case, and of enforcing them with effect; while a pardonable attachment to the display of irritating circumstances, irrelevant to the proper subject of discussion, distract the attention, and weary the patience of their auditors.

† In a case of *R. v. Stoddart*, before Abbot, C. J. at Guildhall, Oct. 16, 1819, the following is the substance of what was addressed to the prosecutor (Hunt), and is material on the present subject. "If it be *your intention to address the jury*, it is a course which you will not be permitted to pursue. It has been determined by all the judges of the court of King's Bench, and that determination has been publicly expressed on more than one occasion, together with the concurrence of many of the other judges, that a prosecution by indictment is not, in point of law, the suit of an individual. If any individual seeks redress—personal redress for a personal injury, the course that he is to pursue, is to bring his action for damages. If, instead of electing to bring his action for the redress of a personal injury, he thinks fit to put the law in motion *in the name of the King*, for the sake of public justice, it is not *his* suit, but it is the suit of *his Majesty*. Where a person therefore chooses to proceed by indictment, he has no right to address the jury, unless he is a gentleman at the bar. That opinion has been solemnly pronounced by all the judges of the Court of King's Bench. We have at every assizes, and under every commission of gaol-delivery in London, at *every court of quarter session* holden throughout the country, a great number of prosecutions,

objections in principle, but it is unquestionably right in its practical effects; not that it is to be reasonably presumed more actual knowledge can be exhibited by a young Barrister, at the commencement of his professional career, than by an experienced Attorney; but because the latter is, perhaps, reluctantly obliged, and frequently unconsciously seduced, to mix, with his professional services, no inconsiderable degree of local prejudice, and jealous irritability; from which the stranger Barrister may reasonably be expected to be exempt. Viewing the exercise of this duty, however, as confined to these two descriptions of persons, we have only to see what official engagements operate as a prohibition upon individuals.

Of Barristers it is sufficient to observe, that they are defined to be "Counsellors learned in the Law," admitted to plead "*at the bar*, and there to take upon them the protection and defence of clients."* Serjeants, and King's Counsel, do not usually plead at sessions, it being considered *infra dignitatem*, except by special retainer on extraordinary occasions; but among Barristers below these degrees, called *utter or ouster Barristers*, or *Barristers without the bar*, there seems to be no exception either of law or courtesy, so they be not constituent parts of the court, as justices on the bench, or clerk of the peace.

Respecting Attorneys, there are many restrictions, both

Attorneys.
instituted certainly by private individuals, in which the name of his Majesty is used; but in none of them is it ever thought that the person prosecuting has a right to address the jury. The course taken on every occasion of a criminal prosecution is, where there are depositions, that the judge refers to them, and examines the witnesses one by one according to those depositions. Where there are no depositions, as in cases of this description, it has been usual for the judge to consult the person prosecuting as to the manner of bringing his case before the court, and as to the witnesses proper to be examined. That is the way in which justice is administered in such cases, and that is the course of proceeding I mean to adopt on the present occasion. Mr. Hunt will communicate with me, and give me the names of his witnesses. If he is disposed to proceed in that way, it shall be done. This is the only course I shall allow; and if you do not choose to have justice administered in your case according to the ordinary and established rules and opinions of the judges of the land, the record must be withdrawn."

* 1 Black. Com. 23.—Wood's Inst. 418.

general and particular. "No person shall act as Solicitor, Attorney, or Agent, or sue out any process at any general, or quarter, session of the peace, without being admitted and inrolled according to law, on pain to forfeit 50*l.* to him who shall sue within twelve months, with treble costs; and if any Attorney or Solicitor shall permit any person not admitted and inrolled to make use of his name in such session, he shall forfeit 50*l.* in like manner.

"And no clerk of the peace or his deputy, nor any under sheriff or his deputy, shall act as a Solicitor, Attorney, or Agent, at any general, or quarter, session of the peace of the county or place where he shall execute his said office, on pain of 50*l.* as aforesaid."*

These prohibitions, however, only extend to persons who, having some pretensions to act as Attorneys, have either omitted to entitle themselves to such privilege, by a neglect of the previous forms prescribed by law, admission and inrolment; or who have become disqualified from acting in the capacity of Attorneys, from having been invested with some office which the law declares to be incompatible. On the *latter* point the statute referred to is sufficiently specific; for the *former* ground of disqualification, it is necessary to resort to the other statutes on the subject in a general way, and in the order in which they were passed. The very early ones, however, being considered as obsolete, or irrelevant, it is sufficient to notice the effect of the more modern ones in the following order.

Prohibitions. No recusant convict shall practice as an Attorney in any court, on pain of 100*l.*; half to him that shall sue, and half to the King."†

If an Attorney be convicted of having delayed his client's suit, or of having demanded more than fees and disbursements, besides being liable to pay costs and treble damages to his client, he is declared to be "disabled from acting."‡

"No person convicted of forgery, perjury, or common barrctry, can practise as an Attorney or Solicitor, but shall be transported for seven years."§

"No person shall act as an Attorney or Solicitor, unless

* 22 Geo. 2. c. 46.

† 3 J. 1. c. 7.

‡ 3 J. 1. c. 5.

§ 12 Geo. 1. c. 29.

he shall have been bound for five years, and served the same.* And the whole service must have been with the same Attorney, or by his assignment,† except in case of death, when such clerk may be turned over.‡ And he must be admitted, sworn, and inrolled before he can act as an Attorney, under a penalty of 50*l.* and being *disabled* thereafter. But quakers may be admitted on their affirmation.” §

Admission, and inrolment, presupposing a compliance with all the conditions enacted by statute, such as the payment of stamp duties, &c. it is unnecessary to notice those which are imposed on articles of clerkship, or any others which may be necessary in the process of qualifying to act as Attorneys, merely as duties; but it must be observed that every Attorney, to entitle himself to practise in that capacity, must “annually take out a certificate from the commissioners of stamps, under a penalty of 50*l.* and being *disabled* to practise:” || Any Attorney, therefore, who may have omitted to take out such certificate, has forfeited his right to act in that capacity in the court of quarter session.**

Certificate necessary.

It is almost unnecessary, in the last place, to observe, that any Attorney who has been struck off the rolls of the courts above, as sometimes occurs, for dishonourable practices, although not especially provided against by any positive law, is no longer an Attorney of such superior courts, and cannot, therefore, be permitted to practise in the inferior ones, and, of course, is not admissible in that of the quarter session of the peace.††

Having been struck off the rolls.

Under the term *fees*, it is not to be presumed that any thing relative to the remuneration to counsel for their assistance, or other voluntary payments, of which the law takes no cognizance, can have place here. Fees, as they appertain to the present subject, are such payments as the law allows, or prohibits, to persons who, by their offices or their callings, are in some way or other appurtenant to the court of sessions of the peace. They chiefly relate to the

* 2 Geo. 2. c. 23.

† 7 Term R. 456.

‡ 2 Geo. 2. c. 23.

§ 22 Geo. 2. c. 46.

|| 37 Geo. 3. c. 90.—39 & 40 do. c. 72.—48 do. c. 149. and 54. do. c. 144.

** 2 Wils. R. 382.

†† Cowp. 829.

officers of the court, properly so called, to witnesses, and to Attorneys. Enough has already been said respecting this subject, as it applies to the superior constituent parts of the court of session; any consideration of the fees to constables and others, in the various preliminary steps of prosecution, anterior to the sitting of the court, is foreign to the purpose here; those which the sheriffs used to demand on the acquittal or discharge of a prisoner have long been abolished;* those which are allowed to the clerk of the peace at the commencement of the proceedings before the court, are regulated by a recent statute before noticed;† and by another nearly as recent,‡ all prison fees, except in the King's Bench, the Fleet, the Palace Court, and the Marshalsea prison, are entirely abolished; and all fees paid to the clerks of assize, of the court, of the peace, or their deputies, as well on the acquittal as other discharge of a prisoner, are done away, and the officers forbidden to receive them; and any transgressions of these regulations are declared to be misdemeanours in the parties demanding them, and punishable accordingly. To indemnify the officers, however, it is provided by the same statute that they shall be paid out of the county rate sums proportioned to the amount of the fees they have been accustomed to receive.

Fees, for so they have been frequently, though erroneously, denominated, which are given with subpoenas to secure the attendance of witnesses, demand but very brief notice. It has been frequently decided, that, in civil cases, a witness is not bound to attend, in pursuance of a subpoena, unless a tender be made to cover all the reasonable expenses of his journey and necessary stay.§ Attendance upon criminal prosecutions stands on a different ground. In those for *fraud and felony*, the prosecutor and witnesses, on petitioning the court, will be allowed reasonable expenses, not only for their journey, &c. but if poor, for loss of time also; || it therefore appears that the necessity for making any advance of money with a subpoena is rather a mere matter of prudence, in order to prevent the witness from being im-

* 14 Geo. 3. c. 23. † 57 Geo. 3. c. 91. ‡ 55 Geo. 3. c. 50.

§ Fuller v. Prentice, 1 H. B. 49.—Holme v. Smith, Marsh, R. 410.

|| 18 Geo. 3. c. 19.

peded, by lacking the means of removing himself, than of necessity; nevertheless it should not pass unnoticed that the statute, which says that subpoenas may be served "*in any part of the kingdom,*" provides, that no attachment shall issue for disobedience, unless reasonable charges of going to, and returning from, the place of trial, shall have been tendered.* This was doubtless inserted with a view to the very great distances to which witnesses might occasionally be called under the authority of this statute, without the means of bearing their expenses until they could make application for recompence.

No compensation, however, is made by statute for the attendance of witnesses in cases of *misdemeanour*, and therefore in criminal prosecutions for offences of that description, it behoves the prosecutor, in order to secure the attendance of his witnesses, to tender them sufficient to cover all reasonable expenses.

Respecting the demands of *Attorneys* upon their clients, it is sufficient here to observe, that they are compelled by statute† to deliver their bills *duly signed* a month before they can commence an action for payment; and that this provision extends to charges for business done at the sessions of the peace, as well as in the superior courts,‡ and such bill for such business must abide taxation, in the same manner as in other cases.§ This observation is elicited by the notorious practice of persons acting in the capacity of Attorneys at sessions of the peace, who are not qualified by a compliance with the requisites of the statutes, who therefore do not presume to act in the other courts; and who, it appears by the decisions here referred to, cannot enforce the payment of any remuneration for their services in that of the sessions of the peace.

* 45 Geo. 3. c. 92.

† 2 Geo. 2. c. 3.

‡ Clarke v. Donovan, 5 T. R. 694.

§ Ex parte Williams, 4 T. R. 496.

CHAPTER III.

THE PRELIMINARY PROCEEDINGS AT SESSIONS.

Of the Matters over which the Courts of Quarter Session have a legal, or a customary, Jurisdiction; and the order of proceeding therein respectively.—The Duties of the Chairman, and other Parties, preliminary to the making of presentments, the trials of offenders, the hearing motions, and the determination of appeals, &c.

Authority of
the Sessions.

BY virtue of their commission, it is perfectly clear that justices of the peace may execute all statutes made for the keeping of the peace, as well those made before the institution of their office, as since.*

But they have also, by several particular statutes, authority given them over offences, created, described, prohibited, or punished, by those statutes respectively, which are not comprised in their commission.

Justices of the
peace not de-
signated by
justices of Oyer
and Terminer.

The justices of the peace are not, in general, emphatically, justices of *oyer and terminer*, for there is a distinct commission of that description; therefore statutes which limit an offence to be tried before *such* justices, do not comprehend justices of *the peace*.† On this ground, although before judges of assize popular actions, and indictments for misdemeanours, may be presented and tried at the same session, they cannot be before justices of the peace, but by consent; although felonies may be,‡ and generally are.

Felonies.

In as general terms, then, as brevity recommends; but as comprehensive, at the same time, as precision seems to require; the authority of justices extends not to *hear and determine treasons or præmunire, although they may apprehend and examine the offenders, as they may do in every case*

* 2 Hawk. c. 8.

† Hale, 165.

‡ 2 Hale, 48.

of felony whatever (of which these are but particular instances) and commit them for trial ;* nor forgery, nor perjury at common law, but to the same extent, † because they have no tendency to a breach of the peace; nor usury, because it is an offence of modern creation, and no special jurisdiction over it is given to them.

Although the commission doth not mention *murders* and *Manslaughters* by express name, but only *felonies* generally, yet by such general word they have power to hear and determine murder and manslaughter, and also may take an indictment of *se defendendo*. ‡

But though justices of peace, by force of their commission, may have a general authority to hear and determine felonies, yet it has been usually thought advisable for them to proceed no farther than as above, in relation to murder or manslaughter ; nor indeed in any other crimes from which the benefit of the clergy is taken, and only in inferior offences, as *petty larceny*, misdemeanours, and such, to bind over to the sessions; but this is merely a point of discretion and convenience, not because they have not jurisdiction of the crimes;§ nor is the practice unusual, for beside many sessions holden under charters, by which *the power of life and death*, according to the familiar expression, is specifically entrusted, there are others wherein the justices ordinarily try larcenies of every description and quality, and some other of the more aggravated offences.

By the stat. of Edw. 3. c. 1. and also by the express words *Trespases*, of their commission, justices of the peace may hear and determine all, and all manner of, *trespases*.

This is a word of very general extent, and in a large sense not only comprehends all inferior offences, which are properly and directly against the peace, as assaults and batteries, and the like, but also all others which are so only by construction, as all breaches of the law in general are said to be. ||

* 2 Hawk. c. 8.

† Ibid.

‡ 2 Hale, 46.

§ Ibid.—Pract. Expos. title PEACE, JUSTICES OF, sect. 1.

|| Ibid.

Yet, like perjury and forgery at common law, any offences which do not directly tend to cause a *personal wrong*, or *open violence*, are not cognizable by them, unless it be by the express words of their commission, or some statute.*

Subjects commonly cognizable before courts of session.

Assaults and batteries, barrettry, cheats or obtaining money &c. under false pretences, combinations, conspiracies, embezzlements, engrossing, extortions, forestalling, gaming, larceny, lewdness, libels, nuisances, riots, the dissolution of apprenticeships, the disposal of vagrants, the whole system of the highway, and poor-laws, are among the subjects either expressly mentioned in their commission, or specially entrusted to them by statutes, and most commonly cognizable in some shape or other before courts of quarter session. Perjury is also made cognizable before them by statute,† but the offence is more commonly tried at common law before the higher tribunals.

Assembling of the court.

The court being assembled, (which must be before twelve of the clock at noon of the day for which it has been summoned, in order that such persons who have to take the Oaths of Office, of Supremacy, Abjuration, &c. may comply with the statutes which enjoin them,) the usual course is first to proclaim the session, which is done by a bailiff of the court in the following form :

Proclamation.

O yez, O yez, O yez,—The King's justices do strictly charge and command all manner of persons to keep silence, while the King's commission of the peace for this county of is openly read, upon pain of imprisonment.

Statutes to be read.

Then the commission, the King's proclamation against profaneness, &c. and the several statutes which are severally directed to be read at the sessions, ought so to be by the clerks of the peace, and town clerks respectively, in an audible voice. These *were* principally the following:—5 Eliz. c. 1. against popery; 30 Car. 2. c. 3. as to burying in woollen; 11 & 12 Will. 3. c. 15. as to ale measures; 1 Geo. 1. c. 5. as to riots; and the black act, 9 Geo. 1. c. 22. which have been required to be given in charge at every quarter

* Salk 406.

† 5 Eliz. c. 9.

session; and the 4 & 5 Will. & Mar. c. 24. 7 & 8 Will. 3. c. 32. 3 & 4 Ann. c. 18. and 9 Geo. 2. c. 25. concerning jurors, which are to be read in Midsummer sessions yearly; and 2 Geo. 2. c. 24. for preventing bribery and corruption in the election of members of parliament, which is to be read at every Easter session.

Some of these have been repealed, or are to all intents and purposes become obsolete, and a reasonable apology may be made for the general disuse into which the practice of reading others of them is fallen, from the notoriety which is attached to many of them that are still in full force, as well as from the pressure of business, which is of late prodigiously augmented, by recent statutes having thrown such a variety of additional burdens on justices, both in, and out of, sessions; an augmentation fully recognized by the legislature itself in express terms, in the preamble to the statute* hereinafter more particularly to be noticed, for enabling every quarter session of the peace to divide itself into two courts.

The persons who attend to take the several oaths are next called, and such oaths are administered to them by the clerk of the peace.†

Those of allegiance, supremacy, &c. themselves have been already given in a former chapter, and require no repetition: but it is necessary to notice two statutes passed in this King's reign, relative to the oaths to be taken by persons dissenting from the established church. The former of these relates to papists, who laboured under various disabilities, and were liable to numerous penalties, by previous statutes, but were relieved by the 31st of

* 59 Geo. 3. c. 28.

† Persons qualifying for offices are directed to take the oaths between the hours of nine and twelve in the forenoon, and not otherwise; 25 Car. 2. c. 2.—1 Geo. 1. st. c. 13. But the oaths of allegiance, supremacy, &c. may be taken between the hours of one and two; it has been held a sufficient compliance with the statute however, if the ceremony of administering the oaths of qualification for offices be commenced previous to the last of the hours of limitation appointed by the statute, and continued till all are sworn.

Geo. 3. c. 32. on taking the oath therein prescribed as follows. *

“It shall be lawful for persons professing the Roman Catholic religion, personally to appear in the Court of Chancery, King’s Bench, Common Pleas, or Exchequer, at Westminster, or in any court of general quarter session of, and for, the county, city, or place where such person shall reside, and there in open court, take, make, and subscribe the declaration and oath.”

Papists’ oath.

I, A. B. do hereby declare, that I do profess the Roman Catholic religion.

I, A. B. do sincerely promise and swear that I will be faithful, and bear true allegiance to his Majesty King George the Third, and him will defend, to the utmost of my power, against all conspiracies and attempts whatever that shall be made against his person, crown, or dignity; and I will do my utmost endeavour to disclose and make known to his Majesty, his heirs and successors, all treasons and traitorous conspiracies which may be formed against him or them; and I do faithfully promise to maintain, support, and defend, to the utmost of my power, the succession of the crown, which succession by an Act, entitled, ‘An Act for the further limitation of the crown, and better securing the rights and liberties of the subject,’ is and stands limited to, the Princess Sophia, electress and duchess dowager of Hanover, and the heirs of her body, being protestants; hereby utterly renouncing and abjuring any obedience or allegiance unto any other person claiming, or pretending a right to, the crown of these realms; and I do swear that I do reject and detest as an unchristian and impious position, that it is lawful to murder or destroy any person or persons whatsoever, for or under the pretence of, their being heretics or infidels; and also that unchristian and impious principle, that faith is not to be kept with heretics or infidels; and I further declare, that it is not an article of my faith, and that I do renounce, reject, and abjure the opinion, that princes excommunicated by the Pope and Council, or any authority of the See of Rome, or by any authority whatsoever, may be deposed or murdered by their subjects, or any person whatsoever; and I do promise that I will not hold, maintain, or abet, such opinion, or any other opinions contrary to what is expressed in this declaration; and I do declare that I do not believe, that the Pope of Rome, or any other foreign prince, prelate, state, or potentate, hath, or ought to have, any temporal or civil jurisdiction, power, superiority, or

* This oath is directed to be taken between nine in the morning and two in the afternoon.

pre-eminence, directly or indirectly, within this realm; and I do solemnly, in the presence of God, profess, testify, and declare, that I do make this declaration, and every part thereof, in the plain and ordinary sense of the words of this oath, without any evasion, equivocation, or mental reservation whatever, and without any dispensation already granted by the Pope, or any authority of the See of Rome, or any person whatever: and without thinking that I am, or can be, acquitted before God or man, or absolved of this declaration, or any part thereof, although the Pope or any other person, or authority whatsoever, shall dispense with or annul the same, or declare that it was null or void. So help me God.

Which said declaration and oath shall be subscribed by the person taking and making the same *with the name at length*, if such person can write, or with his mark, the name being written by the officer, where such person cannot write, such person, or officer, as the case is, adding the title, addition, and place of abode of such person, and the same shall remain in such court of record. Oath to be made a record.

And the proper officer of such court with whom the custody of such record shall remain, shall make, subscribe, and deliver a certificate of such declaration and oath having been duly made and subscribed, to the person who shall have made and subscribed the same, if demanded, for which certificate there shall be paid no greater fee than 2s. and such certificate, upon proof of the certifier's hand, and that he acted as such officer, shall be competent evidence of such person's having duly made and subscribed such declaration and oath, unless the same shall be falsified. Certificate good evidence.

The other statute, to which allusion was lately made, is the 52d Geo. 3. c. 155. and was made for the protection of *protestant dissenters*; the former statutes for that purpose* not having been considered as sufficiently explicit, and, indeed, having given occasion to much controversy, and to what the court of B. R. considered as misinterpretation.† By the last mentioned statute it is enacted that "No congregation or assembly for religious worship of protestants (at which there shall be present more than twenty persons, Protestant Dissenters.

* 1 Wm. c. 18. and 19 Geo. 3. c. 44.

† See Pract. Expos. *title* DISSENTERS, sect. 2.

beside the immediate family and servants of the person in whose house, or upon whose premises, such meeting shall be had) shall be permitted unless and until the place of such meeting, if the same shall not have been registered under any former act, shall have been certified to the bishop of the diocese, or archdeacon, or to the justices at the general or quarter sessions; and all places of meeting so certified by the bishop or archdeacon's court, shall be returned by such court once in each year to the quarter sessions; and all places of meeting certified to the quarter sessions shall be returned once in each year to the bishop or archdeacon: and the bishop, or registrar, or clerk of the peace, shall give a certificate thereof to such persons as shall demand the same, on payment of 2s. 6d. &c. &c."

To be certified at the general or quarter sessions; and all places of meeting so certified by the bishop or archdeacon's court, shall be returned by such court once in each year to the quarter sessions; and all places of meeting certified to the quarter sessions shall be returned once in each year to the bishop or archdeacon: and the bishop, or registrar, or clerk of the peace, shall give a certificate thereof to such persons as shall demand the same, on payment of 2s. 6d. &c. &c."

To be returned annually to, or by Quarter Sessions.

Exemption from penalties. These requisites respecting the *house of meeting*, having been complied with, the statute goes on to declare that, "all *teachers* and *preachers*, and persons resorting to any place of worship thus certified, shall be exempt from all penalties under statutes relative to religious worship, on condition of taking the oaths prescribed by 19 Geo. 3. c. 44. when thereunto required by any justice of the peace; of which taking of the said oaths, the said justice shall give a certificate according to a form therein prescribed, which certificate shall be conclusive evidence; and any person may require a justice of the peace to administer the said oaths." So that, as the law stands now, all doubts respecting the discretionary power of justices in session to judge of the qualifications of persons offering to take the oaths, and to accept, or reject, them, appear to be done away.*

Justice may require dissenting ministers, &c. to take the oaths.

Any person may require a justice to administer the oaths.

Constables called. The ceremony of administering these oaths of qualification and indemnity, being concluded, it is usual, in the next place, for the clerk of the peace to call over the Constables of hundreds, and of parishes, &c.† which is commonly done (with respect to the defaulters on the first call) a second, and even a third time. On their not answering to the name of their respective parishes for

Defaulters.

* See Pract. Expos. *title* DISSENTERS, sect. 2. † See *ante*, p. 64.

which they serve, on the third call, the court sets a fine upon the defaulters.*

Next, the same officer calls over the names of those that are returned upon the grand inquest, who must now answer to their names, and now those who have any claim of exemption from law or courtesy, must address them to the chairman.† Those who remain to serve, having taken their places in the box assigned to them, the following oath is administered by the clerk of the peace, first to the foreman, thus:—

You, as foreman of this inquest, shall diligently inquire, and true presentment make, of all such matters and things as shall be given you in charge. The king's council, your fellows', and your own, you shall keep secret. You shall present no man for envy, hatred, or malice; neither shall you leave any man unpresented for fear, favour, or affection, or hope of reward; but you shall present all things truly as they come to your knowledge, according to the best of your understanding. So help you God.

Then the rest of the grand jury, by three at a time, in order, are sworn in the following manner:

The same oath which your foreman hath taken on his part, you, and every of you, shall well and truly observe and keep on your parts. So help you God.

The Grand Jurors having all been sworn, it is the duty of the chairman of the session to deliver his charge to them.‡

Charge to the Grand Jury.

* See *ante*, p. 64.

† See *ante*, p. 71.

‡ It is much to be lamented that this part of the chairman's duty is very frequently altogether omitted, and sometimes performed in a very cursory, and even slovenly, manner. The calendar generally presents sufficient occasion for observations on the general state of morals in the particular district; on the activity of justices, chief constables, and all officers of the peace; and on other subjects immediately connected with the duties of the day: and there can be few instances of a session occur, in which there is not some indictment or other to come before the jurors, on which some information may not be, at least, convenient and acceptable, if not absolutely necessary. Indictments for assault, which frequently originate in a spirit of party, malice, or revenge, and are usually one item in the business of a quarter session, present a fruitful source of observation; indictment of roads another; and some modern statutes

Recognizances
called.

The charge being concluded, the course is to call the recognizances, especially such as are to prosecute and give evidence, that so bills, which have not been previously prepared, may be drawn by the clerk of the peace.

The bills, as they are got ready, that is to say, drawn out fairly and engrossed on parchment, (either by the prosecutor's professional adviser, or by the clerk of the peace,) with the names of the witnesses written on the backs of them respectively, are delivered to the Grand Jury, and the parties bound to give evidence upon them being sworn in court, are sent to the Grand Jury to give their evidence.* It is presumed of course that they are all in attendance for these purposes, either by recognizance or under subpoena; to which there can regularly be but one

(*ex. gr.* those which respect the coin, embezzlement by servants, friendly societies, saving banks, seditious meetings, and the regulation of the poor of all descriptions) comprehend so many more points of discrimination, as it is no disparagement of the discernment of such persons as usually compose the grand juries at quarter sessions, to say, must be much above their comprehension, without some explanatory remarks from the chairman, by way of previous charge.

These observations on the necessity for a charge at all events, naturally lead to some consideration of the sufficiency of the chairman to discharge this duty, and therefore to introduce a decided reprobation of a measure lately introduced into some counties, of the respective justices taking the chair by rotation. Nothing can be more subversive of regularity, consistency in practice, expedition in business, information to the jurors, authority over the advocates, or satisfaction to the country, than such a practice. To execute the various duties of chairman of a quarter session, as they ought to be executed, requires the *personal* qualifications of *some* legal knowledge, reasonable experience, an acquaintance with forms and technical proceedings, and a portion of that decision and authority, which can only be acquired by a confidence in the possession of these qualities, to at least a certain degree. Unless the chairman possess these requisites to some extent, the jury can receive no information, inexperienced advocates will run riot, and the county will not feel that respect for the court, which it is both desirable, and useful, that it should do. It leads also to another consequence, which ought neither to be agreeable to himself, or the Bench, or the sutors of the session, *viz.* that the clerk of the peace, being the only permanent and stationary organ of the court, instead of its minister, becomes its master.

* Dalt. c. 185.

exception, and that arising out of a privilege given by a statute* to prosecutors of offences committed within the county of a city, or town corporate, to prefer their indictments before the Grand Jury of the county adjoining, at the assizes for the same, on condition of entering into recognizance to pay the extra costs incurred by such proceeding, if the court shall so direct. In the case of this privilege being taken advantage of, it may be necessary to notice here, that the prosecutor, *ten days before the session*, must give to the defendant, as well as to the witnesses, notices in writing to that effect.

In this stage of the proceedings, a few words on the duty of Grand Juries (and which may well make part of the subject of the chairman's charge to them), cannot be considered irrelevant. It has been laid down in general terms by some of the greatest lawyers, that the Grand Jury ought *only* to hear the evidence for the king, that is to say, on the side of the prosecution.†

Duties of the
Grand Jury.

But others have received this position with some qualifications,‡ which indeed it ought to be; for they are sworn to present the truth, and nothing but the truth; and it may so happen, that they may not be able to elicit truth from the witnesses on the part of the prosecution only, and they may actually be convinced of that circumstance. The true intention seems to be this, viz. that *prima facie* the Grand Jury have no concern with any testimony but that which is regularly offered to them along with the bill of indictment, on the back of which the names of the witnesses, as we have observed, are inserted; their duty being merely to inquire whether there be sufficient apparent ground for putting the accused party on his trial before another jury of a different description. If nothing ambiguous or equivocal appear on this testimony, they certainly ought not to seek any further; but if their minds be not satisfied of the truth, so far as is necessary for *their* preliminary kind of inquiry, they are not prohibited from requiring other evidence in *explanation* of mere facts, but they can proceed no

* 38 Geo. 3. c. 52. † 2 Hale's Hist. 157. ‡ 4 Black. Com. 303.

further; for that would be to *try*, although *their* duty is confined merely to the question, "whether there be sufficient *pretence* for trial."*

The Grand Jury are sworn to inquire *pro corpore comitatûs*, and therefore, by the common law, cannot regularly indict or present any offence, which does not arise within the county or precinct, for which they are returned.

Exceptions to
indictments.

And therefore it is a good exception to an indictment, that it doth not appear that the offence arose within such county or precinct.

And it seems agreed, as a general rule, that let the nature of the offence indicted be what it will, whether local or transitory, as seditious words, battery, &c. if it appear upon plea of not guilty, to have been committed in a different county from that in which the indictment was found, the party shall be acquitted.† The Grand Jury, therefore, cannot regularly inquire of a fact done out of the county for which they are sworn, *unless particularly enabled by act of parliament*. Of these there are several, but not relating to offences which usually come before courts of quarter sessions,‡ being principally respecting the higher species of felonies.

But it seems by the common law, if a fact done in one county prove a nuisance to another, it may be indicted in either. Also by the common law, if one guilty of larceny in one county, carry the goods stolen into another, he may be indicted in either;—because the possession continuing constructively in the party robbed, every moment's continuance of the trespass is as much a wrong as the first taking, and the offence is therefore complete in both. And by way of conclusion to the consideration of this particular subject, it is necessary to observe, that now it is

* 3 Inst. 25.—See Pract. Expos. title INDICTMENT, sect. 3, and Chitty, C. L. 317, by which recent and last-mentioned, author the more liberal doctrine here contended for, in defiance of great name and established authorities, is completely adopted.

† 2 Hawk. c. 25. ‡ 4 Black. Com. 303. § 2 Hawk. c. 25.

provided by statute,* that accessaries before the fact to felonies generally committed within the body of a county, may be indicted and tried, either in the county where the principal felony was committed, or in that wherein the procurement, advice, or counsel, had their origin.

If a person whose evidence is material to the finding of a bill of indictment, refuse to go before the Grand Jury to give evidence, the prosecutor may procure a subpoena to compel him thereto.† Witness refusing to give evidence.

A Grand Jury must find *billa vera*, or *ignoramus* for the whole; what is now usually done by indorsing on it the words "a true bill," or "no true bill," as the fact is; and if they take upon them to find it specially, or conditionally, or to be true for one part only, and not for the rest, the whole is void, and the party cannot be tried upon it, but ought to be indicted anew.

But this rule relates only to cases where the Grand Jury take upon themselves to find part of the same indictment to be true, and part false, and do not either affirm, or deny, the fact submitted to their inquiry; but where there are two distinct counts, viz, one for riot, and the other for an assault, and the Grand Jury find a true bill as to the assault, and indorse *ignoramus* as to the riot, this finding leaves the indictment, as to the count found, just as if there had been originally only that one count;‡ every count containing an integral charge, and therefore having all the operation of a distinct bill.

When the proceedings of the court have arrived at this stage, the order of the arrangement for the remainder must be regulated in every case by local convenience, and that convenience will of course be influenced by the quantity of business to be transacted, and the time which will be required for its execution. Where the jurisdiction is extensive, or the business from that, or any other, cause, particularly heavy, advantage will probably be wisely taken of a recent Act of Parliament,§ which empowers the court of

* 43 Geo. 3. c. 113.

† Comp. R. 325.

† 6 Term R. 295. *Ante*, p. 77.

§ 59 Geo. 3. c. 28.

quarter session to divide itself into two courts, with simultaneous cognizance of offences, and co-ordinate authority over them, in all cases wherein "it shall appear to the parties probable that the business of the session will occupy more than three days, including the day of this assembling." This power of dividing, it may be right here to observe, may, according to the second section of the act, either be exercised at each particular session, as the necessity for it shall arise; or it may be provided for prospectively for any number of sessions that may be thought convenient; and, for the effectual execution of the purposes designed by it, the sessions are authorized to call upon the clerk of the peace to appoint a deputy, and for themselves to appoint an additional cryer for such engrafted or emanant court, and to remunerate them respectively for their labours by order on the county treasurer.

To whatever extent the authority conferred by this statute be exercised, when the Grand Jury have received their instructions from the chairman, and have retired to their room, seems the proper moment for the division of the court to take place. The most natural distribution of the various subjects over which a quarter sessions of the peace now has jurisdiction, seems to be, that one division of the court should take that portion which requires the intervention of a jury, with the motions arising out of, or relating to, the commencement, the postponement, and the result of prosecution, whatever it may be; while the other is occupied with the exercise of the summary jurisdiction given to justices by statute, whether original, or by appeal from that of individual magistrates.

CHAPTER IV.

OF THE PRINCIPAL CRIMINAL BUSINESS OF SESSIONS.

Of Presentments, Informations, Traverses, Indictments, Trials, &c.

THE business of a session of the peace may, conveniently enough, and without doing any unreasonable violence to grammatical precision, be divided into *criminal*, and *civil*. To the former of these divisions it is proposed to confine this chapter, viz. to those subjects which are brought before the court by Presentment, Information, or Indictment, these being the proceedings which lead to the trial by jury; and, on conviction, to punishment either personal, or pecuniary, or both; and *that* to be inflicted by sentence of the court. First of Presentments:

By the general highway act,* justices of assize, the *Presentments*. counties palatine, and of the peace, are authorized, on their own view, or upon information on oath before them by a surveyor of the highways, to make Presentment at the assizes, great sessions, or quarter sessions, of any highway, causeway, or bridge, not well and sufficiently repaired and amended, or any other offences against the provision of that statute, within the jurisdiction where the nuisance arises, and that the same shall be efficient, as if presented on oath by the grand jury.

THE FORM OF A PRESENTMENT OF A JUSTICE OF THE PEACE,
ACCORDING TO THE STATUTE.

County of } At the general quarter session of
(to wit). } the peace of our Lord the King, held for the
said county at in the said county, on (*Tuesday*) the

* 13 Geo. 3. c. 78.

..... day of in the said year of the reign of before A. B. and C. D. esqrs. and the Rev. P. Q. clerk, and others their companions, justices of our said Lord the King assigned to keep the peace in the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanours in the said county committed: A. B. esq. one of the justices of our said Lord the King, assigned for the purpose aforesaid, by virtue of an act made in the thirteenth year of the reign of his Majesty King George the Third, "for the amendment and preservation of the highways," (upon his own view), or (upon information, upon oath, to him given by C. D. surveyor of the highways for the (*parish, &c.*) of in the said county,) doth present, that from the time whereof the memory of man is not to the contrary, there was, and yet is, a certain common and ancient king's highway leading from the town of in the said (*county, &c.*) towards and unto within the same (*county*) used for all the king's subjects, with their horses, coaches, carts and carriages, to go, return, and pass at their will: and that a certain part of the same king's common highway, commonly called situate, lying, and being in the (*parish, &c.*) of in the same (*county*) containing in length yards, and in breadth feet, on the day of in the year of the reign of and continually afterwards until the present day, was and yet is, very ruinous, deep, broken, and in great decay, for want of due reparation and amendment, so that the subjects of the king through the same way, with their horses, coaches, carts and carriages, could not, during the time aforesaid, nor yet can go, return, or pass, as they ought and were wont to do, to the great damage and common nuisance of all the King's subjects through the same highway, going, returning, or passing, and against the peace of our said Lord the King,* and that the inhabitants of the (*parish, &c.*) of aforesaid in the (*county*) aforesaid, the said common highway (*so in decay*) ought to repair and amend, when, and so often as it shall be necessary.

In testimony whereof, the said A. B. to these presents hath set his hand and seal the day of in the year aforesaid.
A. B. (L.S.)

The privilege of Presentment does not supersede the right of indictment.

These Presentments, it must be observed, do not in any degree supersede the right which every man has to indict.

* This form having been prescribed by the statute itself for *presentments for non repair*, it need not conclude, "*contrary to the statute*;" but for other nuisances and offences, for which no form is prescribed by it, a Presentment must follow the usual rule, by so concluding, and must follow the words of the statute in describing the offence presented.—R. v. Winter, 13 E. R. 238.

a road, &c. out of repair; but merely point out another method, by which the offence may be brought before the court and a petty jury, for conviction and punishment, without the intervention of a grand jury.

But a Presentment may also be made *in the first instance* by the grand jury, without the concurrence of any justice of the peace, of nuisances within their own knowledge. ^{Presentment by a grand jury.} Indeed this proceeding seems the duty of grand juries much more frequently than it is their practice.* After the Presentment has been delivered into court by the foreman of the grand jury, an indictment is framed upon it by the officer of the county, which officer, on a session of the peace, is the clerk of the peace. The Presentment is merely called a *bill*, and is designed as instructions on which the indictment is to be found.†

FORM OF PRESENTMENT BY A GRAND JURY OF A BRIDGE
OUT OF REPAIR, WHICH THE COUNTY IS BOUND TO
MAINTAIN.

County of { Be it remembered, that at a general quarter
(to wit). { session of the peace of our Lord the King,
helden at for the said county, on the
day of in the said year of the reign of, &c. before
A. B. and C. D. esqrs. and the Rev. P. Q. clerk, and others
their companions, justices of our said Lord the King, assigned,
&c. &c. &c. It is presented by the oath of M. N., O. P.,
Q. R., &c. (the names of the grand jurors), good and lawful men
of the said county, then and there sworn and charged to inquire
for our said Lord the King, and the body of the said county, as
followeth: that is to say aforesaid; the jurors for our
Sovereign Lord the King upon their oath present, that a certain
bridge over the river T., commonly called bridge, lying
and being in the several parishes of N. and M. in the said county
of in the King's common highway, there leading from
the market town of N. in the said county of to the market
town of M. in the said county of also for and during twenty
years last past, being a common King's highway for all the liege
subjects of our said Lord the King, with their horses, carts, and
carriages, to go, pass, ride, and travel at their pleasure, on, &c.
was, and continually from thenceforth hitherto hath been, and
still is, in great decay, broken down, and ruinous, so that the
liege subjects of our said Lord the King, upon or over the said

* 4 Lamb. c. 5.—4 Black. Com. 394.—Ibid. and 2 Inst. 739.

† 1 Salk, 376.—4 Black. Com. 301.

bridge, with their horses, carts, and carriages, could not, and cannot go, pass, ride, and travel, without great danger, to the grievous damage and nuisance of all the liege subjects of our said Lord the King, upon and over the said bridge going, passing, riding, and travelling, against the peace, &c. and that the inhabitants of the county of N. aforesaid, the common bridge aforesaid, (so as aforesaid being in decay,) ought to repair and amend when and so often as it shall be necessary. * And the jurors aforesaid, on their oath aforesaid, further present, that a certain other public bridge over the river T., commonly called bridge, lying and being in the said county of N. in the said King's highway, leading from the said market town of . . . in the said county of N. to the said market town of T. in the said county of at the several times hereinafter mentioned, and now being a common King's highway for all the liege subjects of our said Lord the King, with their horses, carts, and carriages, to go, pass, ride and travel, without great danger, to the grievous damage and nuisance of all the liege subjects of our said Lord the King, upon and over the said bridge going, passing, riding and travelling, and against the peace of our said Lord the King, his crown and dignity. And the jurors aforesaid, on their oath aforesaid, further present, that the inhabitants of the said county of N. the said last-mentioned public and common bridge, (so as last aforesaid being in decay, broken down, and ruinous,) ought to repair and amend when and so often as it shall be necessary.

**Traverse of a
Presentment,**

It was formerly held, that the Presentment of a road by a justice could not be traversed; † but a different opinion now prevails ‡ and therefore having been received by the court (subject to the observations already made), the proceedings will advance *pari passu* with those of an indictment, after having been returned by a grand jury: the parish or township presented, or indicted, will have to plead, and to traverse if they think fit, at the ensuing sessions; and all questions of controversy relative to the

* It is now so well established, that all public bridges which are of general conveniency, are of common right to be repaired by the whole inhabitants of the county in which they are locally situated (except when such county can show that other persons are liable *ratione tenuræ*, or in *some other way*, which must be done by special plea), that it is unnecessary to multiply authorities. The whole law on the subject may be collected from the following cases: R. v. West Riding of Yorkshire, 2 E. R. 341. Id. 588. and R. v. Northampton, 2 M. and S. 262.

† Dalt. 159.—2 Show. 58.

‡ R. v. Justices of Wilts.—1 Black. R. 467.—3 Bur. R. 1530.

nuisance complained of, will be submitted (if not prevented by respite, or some other of the measures hereafter to be discussed) to the court and petty jury at the next subsequent session.

A Presentment against a parish for not repairing a highway must allege that it is within the parish : * and one against a smaller district than a parish must state expressly *how* such district is liable, † or judgment will be liable to be arrested: and if a parish be situate part in one county and part in another, and a highway lying in one part be out of repair, a Presentment as well as an indictment against *that part only* will be void; it must be against the whole parish. And a Presentment as well as an indictment against the parish of B. for ‡ not repairing a road from A. to B. is exclusive of B. and therefore void; nor will it be avoided by a subsequent repugnant allegation, that certain part of the same situate in B. is in decay. §

Rules respecting the allegations in presentments.

When the parties presented have pleaded and are before the court, it is usual to grant respite after respite, on motion made in court for that purpose; in order to give them time to remedy the evil complained of; the reason and occasion for these, and such like prosecutions, being much less for the purpose of punishing the offenders, than of abating the nuisance. If the object of the prosecution be obtained, by the removal of the obstruction, or the repair of the decay, as the case may be, the usual and the regular course, in order to obtain a discharge of the Presentment or indictment, is to present a certificate to the court, stating that the object has been accomplished, viz. "that the road has been actually well and sufficiently repaired, and is likely to continue in good condition." ¶

Respecting the proceedings.

Many considerations enter into the subject of these certificates, as they affect the duty of the justices in session. After first observing, that giving a false certificate is an

* R. v. Hartford, Cowp. 112.

† R. v. Pendarryn, 2 T. R. 513.

‡ R. v. Clifton, 5 T. R. 498.

§ R. v. Gamlingay, 3 T. R. 513.

¶ R. v. Loughton, 3 Smith, 575.

indictable offence,* it is necessary to see how, and by whom, they are to be given. The great object is to convince the court that the purpose of the prosecution has been obtained, and no specific rule is laid down by what medium that shall be accomplished. It has long been the practice for two neighbouring justices to take a personal view, and grant a certificate thereon, and this may be the better method; but there seems no reason why the court may not, when this method is found impracticable or inconvenient, be satisfied by other evidence. In the latter case, however, it has been a *general*, and ought to be an *universal* rule, that if the testimony of persons, not being justices for the district or division, be accepted, that they shall be present in person, in order to be subject to cross-examination, and that they shall be upon oath. † Nor does it militate against the general propriety of the caution here recommended, that affidavits from persons not present in court have occasionally been accepted. The justices are the sole judges what evidence is satisfactory to them, so as to induce a relaxation of the rigid rules of law and discretion.

Personal views by justices. It is no excuse for the inhabitants of a parish being indicted at common law, that they have done all that is required *by statute*, for the statutes are only in affirmance and aid of the common law; and therefore it follows that the certificate of repair must be governed by the same consideration, and be ample as to the state of repair. ‡ Nor shall the defendants be discharged by submitting to a fine, for a *destringas* shall go *ad infinitum* till they *sufficiently* repair. §

By other persons. And repair complete. Judgment. If the defendants continue obstinate or negligent, and do not obtain a certificate, or move for a respite, the proceed-

* R. v. Sir Jos. Mawbey, 6 Term R. 619. where it was held that a certificate by justices of the peace, that a highway (indicted) is in repair, is a legal instrument recognized by the courts of law, and admissible in evidence after conviction, when the court are about to impose a fine. And consequently it is illegal to conspire to pervert the course of justice by producing a false certificate in evidence to influence the judgment of the court.

† 6 Term R. 619.

‡ 1 Hawk. c. 76.

§ Ib. 60.

ings are continued, as in other offences of which the sessions have cognizance to trial, and if conviction ensue, judgment and its consequences of course follow. * Those consequences have been in part noticed already, to which costs are, under some circumstances, to be added.

By statute† it is specially provided that prosecutors, Costs. being *parties grieved*, or being magistrates, or officers prosecuting officially in their public capacity, that each conviction, if removed by *certiorari*, be entitled to costs. †

And it has been decided that a person indicted for not repairing a road *ratione tenuræ*, shall pay costs to the prosecutor. §

And it is provided also by statute || that the court before which any Presentment or indictment for not repairing a highway shall be tried, may award ** to the prosecutor, or to the defendants †† reciprocally, costs, if it shall appear that the prosecution or defence (respectively) was vexatious.

If defendants be acquitted (at the assizes) on a prose- New trial. cution, for not repairing a highway, the court of B. R. will not grant a new trial; yet they will, *under special circumstances*, suspend the entry of judgment, so as to enable the parties to have the question re-considered upon another indictment, without the prejudice of the former judgment. † †

* The fine is not returned at the Exchequer, but paid, as the court shall order, to be applied to the repair of the road indicted, according to the statute 13 Geo. 3. c. 78. s. 47.

† 5 Wm. & Ma. c. 11.

‡ R. v. Kettleworth, 5 T. R. 33. R. v. Taunton St. Mary, 3 M. & S. 465.

§ R. v. Wingfield, 1 Black. R. 602. || 13 Geo. 3. c. 78.

** A certificate that the defence was vexatious is a sufficient award. R. v. Clapton, 6 T. R. 344.

†† Inhabitants of a parish being indicted or presented, and acquitted, not being a corporate body, cannot take costs; but they may be awarded to their solicitor, who is the ostensible defender. R. v. Comerell, 4 M. & S. 203.

‡‡ R. v. Wandsworth, 1 Burnwall & Aldmon's R. 63. Although the determination of this case do not bear a direct reference to the subject immediately under consideration, the affinity of principle is by no means remote.

This is all that it seems necessary to offer on *Presentments*, in this place especially, as the subject matter of them must be again referred to under title *Indictments*. For a similar reason, all notice of pleas to *Presentments* and *Indictments* on the subject of highways, both general and special, is omitted.

Informations. **INFORMATIONS.**—In the nature of penal actions, under particular statutes, are occasionally carried on by criminal process at the sessions, as well as at the assizes, but this so rarely, that a single precedent of such a proceeding, accompanied by such notes as naturally arise out of it, will exhibit sufficient information for a work professedly elementary and condensed.

INFORMATION.

County of.... { Be it remembered that A. B. of*..... in the county of..... gentleman, who as well for our Sovereign Lord the now King, as he himself, doth prosecute on this behalf, cometh before the justices of our said Lord the King, assigned to keep the peace of our said Lord the King in and for the said county of..... and also to hear and determine divers felonies, trespasses, and other misdemeanours in the said county committed, at their General Quarter Session of the Peace, † holden at..... in and for the said county, on..... the..... day of..... in the..... year‡..... of the reign of, &c. in his proper person, and as well for the said Lord the King as for himself, § giveth the court here to understand

* By 18 Eliz. c. 5. informers upon penal statutes are prohibited from suing otherwise than in person, therefore an extent cannot proceed by information *qui tam*. Bull. Ni. Pri. 196.

† By 21 Jac. 1. c. 4. informations on penal statutes may be prosecuted before justices of *assize*, *nisi prius*, *general gaol delivery*, *oyer and terminer*, or of the peace in general, or general quarter session in the counties, (or cities, boroughs, and towns corporate, respectively,) where the offences were committed, (except in a very few excepted cases) at the choice of the parties who shall prosecute.

‡ The suit must have commenced within a year from the offence committed. 31 Eliz. c. 5.

§ The king may sue for the whole penalty by information in the court of B. R. unless a common informer has already commenced a suit *qui tam* for the penalty. R. v. Hymen, 7 T. R. 536.

and be informed, that P. Q. late of the parish of in the county of yeoman or, &c. at, &c. aforesaid, not regarding the laws and statutes of our said Lord the King, but intending to, &c. (*here insert the offence with the same precision as in an indictment*) * against the form of the statute in that case made and provided, † whereupon the said A. B. as well for our said Lord the King as for himself, prayeth the advice of the court on the premises; and that the aforesaid P. Q. may forfeit the sum of according to the form of the statute aforesaid; and that the said A. B. may have one moiety thereof, according to the form of the said statute; and also that the aforesaid P. Q. may come here into court to answer concerning the premises, and there are pledges of prosecuting, to wit, John Doe and Richard Roe: and hereupon it is commanded to the said P. Q. that all other things omitted and all excuses laid aside, he be in his proper person at the next General Quarter Session of the Peace to be holden for the said county, to answer as well to the said Lord the King, as to the said A. B. who, as well for the said Lord the King as for himself doth prosecute of and concerning the premises, and further to do and receive what the said court shall consider in this behalf. ‡

* But it need not conclude "*against the peace,*" &c. as an indictment must.

† But if the offence be recognized by more than one statute, the particular statute under which the suit is prosecuted need not be set forth, as the court is bound to notice all public statutes; nevertheless if the statute be recited, and there be a substantial variance between the statute and the recital, it will be fatal. 2 Hawk. c. 25.

‡ All prosecutors *qui tam* are considered as common informers, and such are not entitled to costs unless expressly given by the statute. 2 Hawk. c. 26.

But by 18 Eliz. c. 5. if any informer, or plaintiff, on a penal statute, shall willingly delay his suit, or shall discontinue, or be nonsuit, or have the trial or matter passed against him, therein by verdict or judgment of law, then he shall pay unto the defendant his costs.

By the same statute (which extends only to common informers, Bull. Nisi Pri. 196.) no informer shall compound or agree with the defendant, but after answer made in court; nor after answer, but by the order or consent of the court; on pain of being set in the pillory, in some market town next adjoining, in open market, for two hours, and of being disabled to be informer on any penal statute, and also of forfeiting 10*l.* half to the king, and half to the party grieved, to be recovered in any court of record, by action of debt or information: and the justices of assize, and justices of the peace in sessions, may hear and determine all offences against this act. N. B. The pillory is abolished (except for particular offences), by a subsequent statute, 56 Geo. 3. c. 138.

Traverses.

The next subject which must occupy the attention of a court of quarter session, and which therefore presents itself in order here, is that which in law language is denominated, "TRAVERSES." The consequences of *traversing* are so mixed up with the consideration of misdemeanours throughout the whole process of trial, that it is a matter of some difficulty to advance a satisfactory explanation of the necessity for giving the subject a separate discussion, preliminary to the general treatment of trials for misdemeanours; but nevertheless, as a chief object here is to accompany, as it were, the progress of the business of a session, in the precise order in which every portion of it usually occurs, from the commencement to the conclusion, there are some insulated considerations respecting Traverses which become necessary to be separately stated, in order to show *why*, and in *what manner*, those charges which are *traversed* occupy a particular and pre-ordained station in the dispatch of that business.

At the quarter sessions, in prosecutions for misdemeanours, where the defendant is not in actual custody, the justices have no power to *compel* him to take his trial at the same court at which he pleaded, * except in some few particular cases specially excepted by statute; † though there is nothing to forbid his doing so, if he prefer it.

In the technical term *Traverse*, is betrayed, as in an hundred other instances of our juridical expressions, a Norman origin; for it is doubtless immediately derived from the French word *Traverser*, ‡ which signifies to cross, come athwart, or impede; which is precisely the effect of

* 4 Black. Com. 351.

† On indictments on the swindling act of 30 Geo. 2. c. 24. as also on indictments against receivers of stolen goods on 2 Geo. 3. c. 28.

‡ Various have been the conjectures respecting the derivation of this term. In the former edition of this work, in deference to the opinion of preceding writers, a different source was attributed to the expression. Etymology is of such inferior importance, however, in a mere practical epitome, that the reasons for the compiler's change of opinion are not of sufficient moment to be dwelt upon. Respecting the *application* of the term there are no differences of opinion.

this process on the course of a prosecution. In the application of it to the subject under consideration, it is used for an issue taken upon an indictment for a misdemeanour, and means nothing more than placing a bar or impediment in the way of trial, till a following session or assize. To traverse an indictment, then, is to take issue upon the chief matter thereof; or to deny the point of the indictment; but to be tried *at a future period*. The trial of these Traverses, at this point of time during the session, or sitting of the justices, and while the grand jury are still supposed to be considering of the bills arising out of the calendar of the day, pre-supposes the subjects to have been *traversed* at the preceding session. It becomes necessary, therefore, for a moment, to travel back to that preceding session, and even somewhat previous to it, in order to trace the steps by which the subject, now to be tried by the petty jury, has been prepared and placed in a condition for such trial. The persons bound, then, by recognizance at the last session, are called to prosecute their Traverses at the present session; for if a person indicted of a trespass, or other misdemeanour, appear, and plead not guilty, and traverse the indictment, he, of course, enters into recognizance to prosecute his Traverse at the next session; for, as we have before seen, the justices of the peace may not *inquire*, and *determine*, civil offences, in one and the same day, because the party is to have convenient time to provide for trial.*

The very commencement, then, of the business is thus : Commencement of traverse proceedings. If the complaint have (as is usually the case in assaults and other breaches of the peace) been in the first instance made to a justice out of session, such justice has probably taken a

* Cro. Car. 448. In felonies, a mere matter of fact, (the offence alleged to have been committed,) is to be tried; but in civil offences which are allowed to be traversed, many questions of right, which require much time for inquiry and preparation, may be involved; as in presentments for nuisances in not scouring a ditch, or repairing a road: for both the fact of its being a highway, and the obligation of the party indicted, or presented, to cleanse it, may come in question.

recognizance with sureties for the appearance of the party accused at the next session, to plead to an indictment. On his appearance, pleading, and traversing, the proceedings take place which have been just described. If the first step in the prosecution be an indictment at the session, (as is usually the practice in cases which are neither felonies nor breaches of the peace, nor directly leading thereto) as in nuisances *ex gr.* then the first process for procuring an attendance, issues from that session, and the party appears at the ensuing session, for the purpose of pleading and entering into recognizance for traversing till the next subsequent session.

Now the party indicted comes into court, and brings with him two sufficient pledges, and he, or his solicitor, delivers them, with their proper additions, to the clerk of the peace; which clerk then reads the indictment, to which the defendant pleads *not guilty*: then the clerk of the peace calls upon the party indicted, by name, to enter into recognizance before court (which is taken in the following form) to try his traverse at the next session.

RECOGNIZANCE TO TRY TRAVERSE.

A. B. you acknowledge to owe to our Sovereign Lord the King the sum of and you C. D. and E. F. severally acknowledge to owe, &c. the respective sums of and to be respectively levied of your goods and chattels, lands and tenements, to his Majesty's use, by way of recognizance, upon condition that you A. B. shall appear at the next session of the peace to be holden for this county, to try your Traverse upon this indictment to which you have now pleaded *not guilty*, and not depart without leave of the court.

To this the accused and the pledges answer that "they are content," and depart the court.

Two days, *at least*, before a Traverse for a misdemeanour is intended to be tried at a session of the peace,* the attorney for defendant draws a notice thereof, and serves the prosecutor with a true copy, according to the following form.

* Two days for the sessions of the peace, and *eight* for the assizes.

THE KING AGAINST A. B. AT THE PROSECUTION OF Y. Z.

Y. Z. Take notice, that I intend to appear at the next (general Notice. or) quarter session of the peace, to be holden at in in and for the county of on next, being the day of by eight o'clock in the forenoon of the same day, and then and there to try my Traverse upon the indictment which you have preferred against me for.

To Y. Z.

A. B.

Having thus seen what are the preparations made for the Trial. trial of a Traverse *at*, and *after*, the previous session, we return to the time of trial.

The defendant must appear in court, at the bar, in his proper person, and the solicitor prepare an affidavit of the service of the above notice, in case the prosecutor do not appear, in the following form, or to the like effect :

County of { O. P. of in the county aforesaid, gentleman, maketh oath and saith, that he did, on the day of instant (*or as the fact is*) personally serve the prosecutor in this case, Y. Z. with a true copy of the notice hereunto annexed,* at his house situate in (or as the fact was) and did at the same time inform the said Y. Z. of the contents and purport thereof.

Sworn at

the day of

O. P.

When the defendant is at the bar, the clerk of the peace reads the indictment to the jury, and then says : " to which indictment the defendant hath pleaded not guilty : your business, gentlemen, is to inquire whether he be guilty or not guilty, and hearken to your evidence ;" then the crier makes proclamation : " O yez, if any one can inform the King's justices, the King's attorney, the King's serjeant, or this inquest now to be taken, let them come forth and

* Had it not been for mistakes which have occurred within the knowledge of the Compiler, he would scarcely have conceived it necessary to observe that, if the attorney do not serve this notice personally, the party who serves it for him must qualify himself, by inspection, to testify that the notice served *was a true copy* of that annexed to his affidavit.

they shall be heard, for the defendant stands at the bar upon his discharge."

Then the prosecutor, and all the witnesses * that appear to be indorsed on the indictment, are called to give evidence, and are heard; and if the defendant be found guilty, the court sets a fine upon him adequate to the offence, or other punishment, as the law directs.

Prosecutor not appearing.

If a prosecutor do not appear against the defendant, according to the notice, the defendant is acquitted, the prosecutor being (*by the crier*) called three several times to come and give evidence; then the chairman says to the jury to this effect: "Gentlemen, A. B. stands indicted for making an assault upon Y. Z. (*or as the offence is*); the prosecutor does not appear to give evidence, therefore, without you know of your own knowledge that the defendant is guilty, you must acquit him;" and thereupon the jury being asked (*by the clerk of the peace*) "whether the defendant is guilty or not guilty," *they say*, "not guilty."

Prosecutor not to be found.

All this, however, proceeds upon the assumption that the prosecutor was found, and that the notice from the defendant was actually served. But it sometimes happens that the prosecutor could not be found. In that case there must be an affidavit of the endeavour to serve him with the notice of trial, and that it was without effect, in such form, and disclosing such circumstances, as may induce the Court, upon motion, to respite the recognizances, and to put off the trial to the next session; making an order, at the same time, that a new notice, left at the last place of the prosecutor's abode, or at the office of the clerk of the peace, with certain conditions of publication or notification, as to the said court shall seem necessary, shall be good and sufficient. These terms imposed by the Court, whatever they may be, having been complied with, the defendant must take out a *venire*, enter his Traverse, and be prepared with affidavits of the order, and of the acts done in conformity

* Writs of subpoena, it is assumed, have been previously served on them from the clerk of the peace, or such other means adopted as were necessary to secure their attendance.

therewith, to be produced at such ensuing session, when, if the prosecutor shall neglect to appear, the chairman will, in like manner as before described, direct an acquittal of the defendant.

Other causes may occur, beside the absence of the prosecutor, for the postponement of trial beyond the period to which the privilege of Traverse extends, originating either with one of the parties, or with the Court, which, though not exclusively peculiar to the proceedings already considered, as more frequently occurring in cases of misdemeanour, appear to claim an appropriate notice under this head.

The most common ground for extraordinary delay of trial is the absence of any material witness, which, if *properly* and *sufficiently* stated and verified, will be certain to obtain it. For what shall be deemed *proper* and *sufficient* reasons no general rule can be laid down, because the occasions, on which it would have to operate, are various and diversified. Acceding to delay, at the instance of the defendant, on good reasons being advanced for it, may be said to be *expedient to justice*, but it is nevertheless an indulgence to be sought, and not a right to be claimed. In general terms, therefore, all that can be advanced with precision on this head, is, that there must appear no laches, on the part of the defendant, no negligence or delay, nor even any fastidious forbearance, in endeavouring to serve the usual process of the court, or to compel the attendance of the witness; but his continual absence, or actual incapacity to attend, and every reasonable effort to compel such attendance, must, in the first place, be fully verified upon oath, as well as the materiality of his testimony to the point of the case, to entitle the party to a compliance with the application.* Thus far, as to the *facts* themselves to be stated; but this is not all; for the affidavit must be *positive* in its verification of those facts, not conjectural, or hypothetical; and it must moreover state directly and unambiguously, that there is a reasonable ground for believing that the delay

Absence of a witness.

Affidavit.

* 1 Chit. C. L. 491. and the authorities there cited.

sought for will tend to the furtherance of justice, by enabling the party to obtain the testimony of the witness at an early period to be proposed;* and lastly, that due and sufficient notice has been given of the application to the opposite party. It is generally true that the person on whose behalf the application for postponement is made, must himself make the affidavit; but this rule admits of many exceptions. If he be prevented by absence, sickness, age, or infirmity, (*and other causes may be imagined,*) his attorney's affidavit, if it be ample and satisfactory, may be sufficient. If the absence of the witness arise from illness, the affidavit of a medical person will ever be the most effectual, for such is deemed sufficient to prevent the estreat of a witness's recognizance.

More notice has been taken of this particular subject than it may appear entitled to; but it is because there is generally no part of the proceedings before courts of quarter session less critically attended to by the courts, or more carelessly executed by the professional attendants.

The affidavit and notice may be in the following, or the like forms, varied according to the circumstances of each particular case.

THE KING ON THE PROSECUTION OF A. B. v. P. Q.

Joint affidavit
of a defendant
and his soli-
citor.

P. Q. the defendant above named, and X. Y. of, in the county of, attorney for the said P. Q. severally make oath and say. And first this deponent the said P. Q. for himself saith, that one D. D. of, in the county of, seedsman, and one of the copartners in the house of C. C. D. D. and Co. at, aforesaid, in the county of, aforesaid, he the said P. Q. is advised, and believes, is a material and necessary witness for him, this deponent the said P. Q.; and that he cannot safely proceed to the trial of the above indictment without his the said D. D.'s testimony: And this deponent the said P. Q. further saith, that as soon as possible after he received notice of the aforesaid bill of indictment against him, he applied by letter to the said D. D. informing him that he, the said P. Q. would require the attendance of him the said D. D. at the trial thereof, and requiring to be informed whether he the said D. D. was then in England, it being known to him the said P. Q. that the said

* 1 Chit. C. L. 491.

D. D. is frequently resident at Amsterdam on account of the dealings and business of the said house of C. C. D. D. and Co. And this deponent further saith, that in answer to his said letter, he was informed by the said C. C. that the said D. D. was at that time at Amsterdam aforesaid, and was not likely to return from thence before the end of the month of then next ensuing, which information the said deponent believes to be true. And the said deponent further saith, that he made another application by letter on the day of instant, addressed to the said C. C. inquiring whether the said D. D. was yet returned from Amsterdam, to which he, this deponent, received an answer so late as last, from the said C. C. informing him, this deponent, that the said D. D. was not yet returned, and that he was not expected to return till the end of the month of next, as before stated, which information this deponent does verily believe to be true. And this deponent, the said P. Q. further saith, that he fully expects to be able to procure the presence of the said D. D. at the next general quarter session of the peace, to be holden for this county of at and the said D. D. will be then and there able and willing to attend the trial of the above mentioned indictment. And this deponent, the said X. Y. for himself saith, that he is the attorney appointed by the said P. Q. to defend him on the trial of the said bill of indictment, on the prosecution of A. B. and that the said D. D. will be a material and necessary witness at the hearing of the same, and that without his testimony the said P. Q. cannot safely go to trial. And this deponent for himself further saith, that on the day of last past, he addressed a letter by the direction of the said P. Q. to the said D. D. at Amsterdam, requesting him to return, if possible, in order to be present at the trial of the before mentioned indictment, at the present session of the peace, and that he received an answer to the said letter from the said D. D. on the day of last, in which the said D. D. assured him, this deponent, that he could not possibly return to England till after the day of then next ensuing, but that he hoped to be able, and would be willing, to attend at the next general quarter session of the peace, to be holden at for the county of aforesaid. And this deponent, the said X. Y. further saith, that he has no doubt but the said D. D. will be ready and willing to attend at the next session of the peace as aforesaid.

Sworn, &c.

County of { O. P. of in the said county, surgeon, Affidavit of
(to wit). { maketh oath and saith, that M. N. of medical att-
carpenter, about ten days since fractured his skull in a dangerous tendant,
manner, and is still confined to his bed on account of the same,
and is utterly incapable of being removed from his said bed
without imminent danger of his life.

Sworn, &c.

THE KING ON THE PROSECUTION OF A. B. v. P. Q.

Notice of
countermand.

Mr. A. B. Take notice, that I do hereby countermand the notice of trial of the above indictment, dated the day of instant, and that I shall, on the day of instant, at the sitting of the court of quarter session at for the county of or as soon after as counsel can be heard, move the said court that the trial of the said indictment may stand over till the next general quarter session of the peace for the said county, on account of the absence of a material witness for the defendant in the same, who is absent in foreign parts, and whom I have not been able to serve with a subpoena.

X. Y.

Attorney to the defendant in the said prosecution.

To Mr. A. B. Prosecutor, &c.
(or to his Attorney).

Postponement
of trial by the
Court.

It has been observed, that the postponement of a trial may also emanate from the Court, independently of the desire of the parties prosecuting or defending. Thus, if several be in custody for a conspiracy or other joint misdemeanour, and bills have been found, and one or more of them prefer to take their trial immediately (*perhaps because they are unable to procure pledges to traverse*), and the others traverse with their pledges according to regular form, the Court, according to all practice, will put off the trial of those who prefer to be tried immediately till the period when, by the customary expiration of the Traverse, all the parties can be tried together. That this is the constant practice it does not require the production of authorities to show, and the reason given for it is, that were it otherwise, as there is generally a difference in the guilt of the different offenders, or at least in the evidence which is to attach guilt to them, those who have the best chance of being acquitted would always offer themselves for immediate trial, in order that they might afterwards become witnesses for their confederates on the trial of *their* Traverses.* On the point of *expediency* there may be no resisting this reasoning; but at the same time it appears to be a harsh exertion of authority, and directly in opposition to the spirit recognized by the Habeas Corpus Act, to keep a person in prison without

* R. v. Teal, 11 E. R. 307.—R. v. De Berenger and others, 3 M. & S.

trial, who is willing to be tried, merely because another is more fortunate in obtaining securities, and prefers having his trial postponed. It leads therefore necessarily to this inquiry; viz. whether any court is, according to the benign principles of the English constitution, justified in rejecting such security as the parties, under the premised circumstances, are enabled to offer, *even though it should be only their own*, to be forthcoming at the same time with their confederates, and by such rejection retaining them in prison without trial?

It only remains to be observed, that a record of every Traverse is to be made up by the clerk of the peace, wherein is to be comprehended a succinct history of the whole proceedings; the stile of the court, the indictment, the process to compel an answer, the Traverse itself, and, if it proceed to trial, the trial by the jury, their verdict, the judgment of the court, execution, and fine assessed. The necessity for all this will more fully appear when we come, in a subsequent chapter, to treat of *Certioraries*.

A record of Traverse.

These records, of course, vary much according to the offence, the court before which tried, the issue of such trial, as acquittal, or conviction, and other obvious circumstances of discrimination. A single precedent, however, by way of illustration, must suffice.

County of { Be it remembered, that at the general quarter session of the peace of our Lord the King, holden for the county of at in the said county, on the day of in the forty-seventh year of our Sovereign Lord George the Third, &c. &c. before M. M., N. N., and O. O., Esquires, and others their fellows, justices of our said Lord the King, assigned to keep the peace in the county aforesaid, and also to hear and determine divers felonies, trespasses, and other misdemeanors committed and done in the said county, upon the oath of P. P., Q. Q., &c. (*here name all the grand jury*) good and lawful men of the county aforesaid, now here sworn and charged to enquire for our Sovereign Lord the King, for the body of the said county, it is presented in manner and form following; that is to say,

County of The jurors of our Lord the King, upon their oath, present that A. B. and C. D. (*here copy the indictment*); wherefore the sheriff of the said county of is commanded that he do not omit by reason of any liberty in his bailiwick, but

One prisoner
found guilty.

The other ac-
quitted.

that he do cause them the said A. B. and C. D. to come before the justices of our said Lord the King, assigned in form aforesaid, at the next general quarter session of the peace, to be holden for the county of to answer to our said Lord the King touching and concerning the premises in the said indictment above specified. At which said next general quarter session of our Lord the King, holden in and for the said county of at the session house at for the said county, on the day of in the fifty-seventh year aforesaid, before M. M., N. N., O. O., and others their fellows, justices of our said Lord the King, assigned to keep the peace, &c. (*as before*), come the said A. B. and C. D. in their own proper persons, and having heard the said indictment read, severally say, that they are not guilty thereof, and of this they and each of them put themselves upon the country, &c. and G. H. clerk of the peace of the county aforesaid, who prosecuteth for our Lord the King, doth the like, &c. Therefore, by the consent of the said A. B. and C. D. let the jury thereupon immediately come before the justices of our said Lord the King above named, and others their fellows aforesaid here, by whom the truth of the matter may be better known, and who have no affinity to the said A. B. and C. D. or either of them, to recognize the matter upon their oaths, whether they, the said A. B. and C. D. or either of them, are guilty of the premises in the indictment aforesaid above specified, or not guilty, because as well the said G. H. Esquire, as the said A. B. and C. D. have put themselves upon that jury, and the jurors of the jury aforesaid impanelled and returned to this purpose by J. L. sheriff of the county of aforesaid, namely, R. S. &c. (*here name the petty jurors*) being called, come, who being chosen, tried, and sworn to speak the truth of and upon the premises in the indictment aforesaid above specified, do say, upon their oath, that the said A. B. is guilty of the misdemeanour aforesaid, in manner and form as by the said indictment is above supposed and specified, upon which all and singular the premises being seen and fully understood by the court here, it is considered by the court here that the said A. B. do pay a fine of forty shillings to the said sheriff to the use of our said Lord the King, and further that the said A. B. shall be committed to the custody of the keeper of his Majesty's gaol at in the said county of for the space of three months. And the said jurors of the jury, upon their oaths, do further say, that the said C. D. is *not* guilty of the misdemeanour in the indictment aforesaid supposed and specified, as the said C. D. hath by his plea above alleged; upon which it is considered by the court here that the said C. D. of the premises in the indictment aforesaid above specified be discharged, and go thereof without delay, &c.

Having now treated, so far as our limits will admit, of Traverses in the abstract, we come, in regular order, to the consideration of those offences charged in the bills of in-

dictment, on which, it is presumed, the grand jury are deliberating.

Offences which may be made the subject of indictment, and are below the crime of treason, are MISDEMEANOURS Offences—description of. and FELONIES.

The majority of those generally tried at sessions of the peace being of the former of these descriptions, they claim the first notice.

MISDEMEANOUR has been, in many works on jurisprudence, somewhat loosely declared to be “all crimes that are less than felony.” This may be colloquially satisfactory as a general *description*, but it imparts no precise or critical *definition* of the specific offence. It tells us indeed what misdemeanour is *not*, but it gives us very imperfect notions what it is. Misdemeanours are divisible into two kinds; viz. those declared by *statute*, and those which are such at *common law*. Statutable misdemeanours it may be impossible to comprehend under a precise and specific definition, because the offences themselves, which the respective statutes have so denominated, are various and diversified in their nature; at least arbitrarily, if not capriciously, named; but have indeed the one characteristic distinction of being “less than felony” in common. Respecting these, however, there can be few difficulties, at least beyond those of mere practical moment, and such will come to be considered hereafter, because the offences themselves are described, if not actually created, by the statutes respectively made for the punishment of them; and in instances where the specific mode of punishment is not directed, it is uniformly and universally understood to be that annexed to common law misdemeanours, viz. fine and imprisonment. Misdemeanours.

But MISDEMEANOURS AT COMMON LAW are not so easily susceptible of a strict determinate character, although necessary to be explained with perspicuity, and limited with precision; as is immediately apparent from the occurrence of bills of indictment having been occasionally presented on account of acts done, which have been considered by the prosecutors as flagrant violations of propriety, but which the courts have refused to entertain as misdemeanours at common law—Misdemeanours at common law—description of.

nours; as well as other cases, in which great doubts have been expressed by courts, and elaborate arguments employed by counsel, before arriving at a conclusion respecting the quality, or even the existence, of a public offence, in the imputed act.* Misdemeanour, in its primary and familiar sense, means nothing more than *trespass*, generally, (the word used in the commission of the peace); in its legal construction, to become the subject of indictment before a court and jury, it may perhaps be described, with a reasonable approach toward correctness, to be "such exclusive trespasses against good manners, or good morals, as tend to injure *the public* either *directly* or *consequently*, but which do not amount to any higher species of characterized crime." If we look through the catalogue of offences which have been determined to be indictable as misdemeanours *at common law*, we shall find that they all fall within this *definition*, or, more correctly speaking, *description*. We will proceed to examine them, *seriatim*, as exhibited in a few examples, premising only,

Examples.

1. That whatever tends, either directly, or indirectly, to a breach of the king's peace, or to the injury of his subjects, *indiscriminately*, is a trespass against good manners, or the manners of a good subject, and consequently dangerous to the public at large, although the *immediate* injury may only be inflicted on an individual. This division of the subject, while it comprehends the greatest variety of common law misdemeanours, is for that reason the most difficult to be perspicuously explained, at least within the limits of a technical description however comprehensive.†

* See 2 Hawk. c. 25. s. 4.—R. v. Southerton, 6 E. R. 126.—R. v. Richards, 8 T. R. 634.

† The discrimination involved in the different receptions which the two following indictments, arising out of different portions of the same transaction, encountered at a Middlesex session a very few years since, though not cited as any authority on the subject generally, are peculiarly illustrative of the difficulty here intimated. Two indictments were preferred against A. B. as for two misdemeanours. The first was for scattering over the *private inclosed premises* of the prosecutor wilfully, and with intent to destroy his poultry, divers quantities of poisoned corn, whereby, and by

2. That whatever tends to impede the general course of trade, involves in it a consequential injury to the public.

3. That whatever tends to bring into contempt the government, or the administrators of it, is injurious to the public, even if it have not a tendency to a breach of the peace, which it generally has.*

4. That whatever tends to interrupt the course of public justice, is injurious to public safety. †

5. That whatever tends to throw contempt or obloquy on religion, is a trespass against good morals, and injurious to the public. ‡

6. That whatever tends to outrage decency, and to deprave the minds of the public, are trespasses against good morals, and highly injurious both directly, and consequentially, to the public interests. §

As deductions from these positions, it must also be observed,

7. That where an act is commanded, or prohibited, though by a statute, yet if that statute has not excluded (by some other exclusively specific punishment, or by a specific mode of enforcing punishment) the proceedings by the common law, a contempt or infringement of such statute is an offence punishable as a misdemeanour by indictment, || which need not conclude "contrary to the statute."

8. That in the case of an act innocent if taken by itself, when accompanied by a criminal intention or design to make such act injurious to the public, whether the perpetration would be a felony, or misdemeanour, such attempt, under such circumstances, is itself a misdemeanour, indict-

means whereof, great quantities of his poultry were actually destroyed. The second was for committing a similar offence, and with the same design, on a public highway contiguous to the premises of the prosecutor. The first bill was dismissed as being only a private and individual injury, and a proper subject for an action. The second was holden to be a public nuisance, and a proper subject for an indictment.

* 1 Hawk. c. 73. R. v. Franklin, 9 St. Tri. 255.

† 4 Black. Com. 127.

‡ Holt on Libels, 66. 1 Hawk. c. 5.

§ R. v. Sedley, 1 Keb. 620.—R. v. Crunden, 2 Campb. c. 89.

|| R. v. Smith, Doug. R. 441.—R. v. Sainsbury, 4 T. R. 457.

able at common law;* and it is by no means necessary, to support such an indictment, that the intention should, in any degree, be carried into execution.†

Application of
examples.

Let us now proceed, then, to the application of these positions, according to the order in which they have been advanced, by the mention of a few, out of innumerable, examples.

Under Rule 1. come indictments for assaults, batteries, barrettry, challenges, conspiracy, libels, nuisances, (and offences of various kinds tending to the injury of life, health, liberty, and property,) riots, &c.

2. For cheating, engrossing, forestalling, regrating, &c. &c.

3. Public libels, sedition, &c. &c.

4. Contempts of courts and magistrates, disobedience and neglect of official duties, extortions, personating bail before a magistrate out of court, perjuries, subornations, rescues, &c. &c.

5. Blasphemy, tumults in places of worship, conspiracies to prevent worship, &c. &c.

6. Stealing corpse from church-yard, keeping bawdy-house, frequenting bawdy-house, exposing naked person, obscene prints and books, attempts to commit unnatural crimes, soliciting persons to permit the commission of them, &c. &c.

7. Misbehaviour of officers in public establishments by statute; nuisances on roads and rivers, and other public places made or regulated by statute; the commission of frauds, or contriving or soliciting the commission of them, in the revenue boards, &c. &c.

8. Having in possession coining tools *with intent* to counterfeit coin; having in possession counterfeit coin *with intent* to circulate it, and thereby commit a fraud upon the public; having in custody picklock-keys *with intent* to rob houses, &c. &c.

By way of general commentary on the foregoing exam-

* Higgins's case, 2 E. R. 5.—Parker's case, 1 Leach, 41.

† Schofield's case, Cald. Ca. 400.

ples of common law indictments for misdemeanours, it may be right to observe—First, on the effect of statutes recognizing acts, which were previously offences at common law; and, secondly, to exhibit a few instances of offences, which, though not coming within the scope and reasoning of the above-mentioned positions, have either been decided by authority not to be comprehended in them, or at least to have been considered doubtful.

It has been already observed, that when a statute creates, Offences prohibited by statute. or declares, an offence, not having been such previously at common law, and goes on in the prohibitory clause to annex an *exclusive* penalty, to be levied in an exclusive mode, as in the usual words, “on pain of such, or such, a penalty or punishment, to be levied on conviction before one or more justices of the peace;” in such case the specific penalty or punishment can alone be inflicted, and no indictment will lie for infringement or disobedience. But if the prohibition to do the particular offensive act be merely *prohibited generally* in the first instance, and then a specific penalty or punishment be provided by a *separate and subsequent* section generally, a prosecutor has his option of going for the penalty provided by the statute, or of indicting for disobedience to the prohibition; on the same principle, that if a statute only enjoined or prohibited an act, without annexing *any* specific penalty or punishment, indictment would be the mode of proceeding to punish the offence of disobedience, or infringement. When a statute only gives an *additional* penalty, or inflicts an *additional* punishment, on an offence previously indictable, and does not prohibit the manner of proceeding according to the old law on the subject, the new penalty or punishment is cumulative, and the prosecutor may proceed either according to the old, or the new, law. Conformably with these observations, it is universally understood that the father of a bastard child, for disobedience to the order of justices for maintenance, may be either indicted for such disobedience, according to the *remedy in use before* the 49 Geo. 3. c. 68. gave a summary remedy by the warrant of a justice, or he may be punished, at the option of the parish aggrieved.

according to the provisions of the last-mentioned statute, by a summary process before a justice. So constables and parish officers may either be punished by indictment for neglect of duty and disobedience of the orders of Justices, or they may be punished summarily by 33 Geo. 3. c. 55.*

But a person cannot be indicted for selling ale without a licence, because it was no offence at common law, and because an exclusive specific punishment for so doing is directed by statute.†

Doubtful cases. Among the cases on which doubts have been entertained, and which have been doubtful only because they were those of offences not circumstantially described by any statute, but as it were, inferentially deduced from general positions of common law, have been the following, among a great variety of others. It has been made a doubt, whether a man, in the prosecution of a legal calling, as, *ex. gr.* distributing hand-bills, (bills of an innocent description,) on a causeway, but by means of which passengers were to a certain degree obstructed and impeded, committed an indictable offence.‡ So, whether a stage-coachman, or driver of a waggon, *plying in the way of his lawful calling* for passengers or loading, but thereby to some degree obstructing a public highway? But it has been recently holden, that *any* unauthorized obstruction of a highway, to the annoyance of the subject; as well as any unnecessary exposure on a highway of any object that has a direct tendency to injure health, life, liberty, or property; is an indictable offence; § and further, that in no case is it necessary to prove actual injury from any such nuisance, for that of whatever kind it be, if in its nature and circumstances it be *sufficient* to produce injury to the subject generally, it is indictable. ||

Frauds committed *in the way of trade* too have frequently given occasion to doubts respecting their liability to

* R. v. Boyell, 1 Bur. R. 832.

† R. v. Douse, 1 Ld. Raym. 672.—R. v. Storr, 3 Bur. R. 1699.

‡ R. v. Sermon, 1 Burr. R. 516.—R. v. Russel, 6 E. R. 427.

§ R. v. Cross, 3 Campb. 227.—R. v. Vantandillo, 4 M. & S. 73.

|| R. v. Wheatley, Leach, 818.—R. v. Osborne, 3 Bur. R. 1697.

the remedy by indictment. It seems to have been decided, that selling to a person *short measure*, of any commodity, is not an indictable offence, being a mere imposition on an individual;* but selling generally by *short measure* is an indictable offence, because that is calculated to defraud numbers.†

It has also been decided, that the exposing to sale, and selling, wrought gold under the sterling alloy, as and for gold of the true standard weight, (though indictable against goldsmiths under the statute,) is not an indictable offence at common law in the case of a common person, the sale not being by any false weight or measure.‡

It was said that a miller keeping a common mill, and either changing corn brought to be ground, and substituting the flour of corn of other kind, or inferior quality, was an offence to be remedied by private action, and not by a criminal indictment.§ But in a recent case of an indictment against a miller for receiving good barley to grind at his mill, and delivering a mixture of oat and barley meal, which was *musty and unwholesome*, it was said by Lord Ellenborough, C. J. in giving judgment, that not being laid in the indictment to be *for the food of man*, (which could not make it injurious to the public, and something more than a mere imposition on the individual), it was not an indictable offence. He also observed, that had the mill in question been laid to be a *soke mill*, at which the inhabitants of the vicinage were *bound* to resort, and that the miller, *abusing the confidence of his situation*, had committed this offence, then indeed it *might perhaps* have been an indictable offence; but that here it appeared to be merely an individual fraud in the common way, and therefore not an indictable offence.||

Frauds of these kinds, in the way of trade also, where no

* R. v. Dunnage, 3 Bur. R. 1131.

† 11 Leach, 818. Black. R. 273.

‡ R. v. Bowen, East. P. C. 820. Cowp. R. 323.

§ R. v. Dunnage, Bur. R. 1131.—R. v. Channel, Str. 793. East. P. C. 818.

|| R. v. Haynes, 4 M. & S. 214.

artifice is used, but what ordinary caution might provide against, present many doubtful cases : thus, the mere offer of a cheque on a banker, and pretending it to be a good one, when in fact the person offering it had no money in the banker's hands, was long holden to be no fraud indictable at common law, but has lately been decided otherwise :* a mere false *assertion*, without some *artful recommendation*, does not constitute such a fraud.† A person pretending also to be the servant of a lady who was the customer of a tradesman, and going to that tradesman, *pretending that she was sent* by her said mistress, and obtaining goods ; but using *no other artful contrivance*, to obtain credit, has been holden not to be a fraud indictable at common law.‡ But where any particular message, or pretended written note, or other *artful contrivance*, is made use of by a servant of any description, and known to the person designed to be defrauded as the servant of the party on whose behalf the application is pretended to be made, the deception amounts to more than a mere wicked falsehood, and becomes an artful contrivance, against which ordinary caution cannot be expected to provide, and is almost every day the subject of indictment at the sessions of the metropolis and other large towns. But where *two or more* persons have confederated together to impose on a tradesman, though even by a *mere affirmance* of a fact which was not true, although they may not be indictable for the fraud at common law, they would be for a conspiracy.§

Those acts clandestinely done, which may eventually bring burthens upon parishes, have been subjects of much doubt and controversy, as to their being indictable at common law, or not : *ex. gr.* privately bringing into a parish, and secreting, a single woman with child, which child is afterward born a bastard, and chargeable to the parish, such parish not being the place of the mother's settlement. || These

* R. v. Jackson, 3 Campb. 370. † R. v. Lara, Leach, 746.

‡ R. v. Bryan, East. P. C. 819.

§ R. v. Macarlay, Salk. 286.—East. P. C. 828.

|| R. v. Chandler, 2 Ld. Raym. 1368.—3 Chit. C. L. 700.

kinds of acts, however, accomplished through the medium of conspiracy of two or more persons, are certainly indictable at common law, on *that* ground.* Individual injury being generally a subject of action, and in some instances of the summary jurisdiction of magistrates, and not of indictment, it has been matter of doubt how far the ill usage of a servant, or apprentice, by a master or mistress, could be the subject of an indictment. It should seem on the whole, however, that though ill usage of apprentices is subjected to the summary jurisdiction of magistrates out of session by a modern statute,† and of *another species* of jurisdiction of sessions, by an anterior statute,‡ yet that, if such servant or apprentice be of tender years, and entirely under the controul of such master or mistress, and the conduct of such master or mistress amount to more than mere misbehaviour, viz. to *cruelty of any kind*, that such misbehaviour is a proper subject of indictment at common law;§ and, in fact, such indictments are commonly entertained, especially with respect to parish apprentices, on the prosecution of parish officers. ||

The term FELONY comprehends the other class of Felony. offences, which, according to the divisions into which they have been separated in a foregoing page, come under the criminal jurisdiction of a court of session of the peace.

In a work calculated for mere reference during the tumult of forensic practice, it is sufficient to refer the reader to higher authorities for etymological, as well as other recondite information, respecting the origin and early adoption of this word, as indicative of a large class of crimes.** According to its modern application, and that is all with which we have to do here, it signifies all crimes, to the commission of which forfeiture of goods, or chattels, or both, is annexed as a punishment. Colloquially described, it consists of all that class of crimes which are between misdemeanors and treason. Felonies are either by the common

* 1 East. P. C. 462.—1 Esp. R. 306. † 20 Geo. 2. c. 19.

‡ 5 Eliz. c. 4.

§ Ridley's case, 2 Campb. 650.

|| See a precedent to that effect in a subsequent page.

** 4 Black. Com. 95.

law, (in other words, by force of ordinances of early feudal times, of which no records remain); or they are by statute, (or records still in existence). They are also divisible into capital, that is to say, subject to the punishment of death; and not capital, or punishable by transportation, fine, imprisonment, or corporal chastisement.

CAPITAL FELONIES, except in a very few local jurisdictions, are never tried before courts of sessions of the peace, and therefore do not come within the cognizance of these pages.* Of those which are not capital, the catalogue is too large for enumeration, within the reasonable limits assigned to a mere compendium. We proceed to consider such as are of usual occurrence.

Larceny.

LARCENY comprehends a very large portion of the Offences to be treated of.

GRAND LARCENY, or stealing to the value of more than twelve-pence, (except under particular circumstances pointed out by statute, and to be noticed hereafter), for reasons already given, is beside our purpose.

PETIT LARCENY, or stealing to a value *not exceeding* twelve-pence, (except also under special circumstances, and made capital by statute), is a species of felony subjecting the offender to forfeiture of goods, to trial before the court of sessions of the peace, and, on conviction, to transportation for seven years, or to imprisonment, whipping, or other corporal punishment; by the common law.

Except as to the value of the goods stolen, petit larceny partakes in its nature of all the qualities of grand larceny, but, it has been observed, is visited by a different degree of punishment in many respects. It does not subject the offender to death; it does not, (except under particular modifications of the crime provided by statute), subject him to transportation for more than seven years; and does not render him incompetent as a witness.† Larceny, then, in its general sense, that is, including both degrees, is now defined to be "*the felonious taking away the personal pro-*

* *Ante*, p. 89.

† By 31 Geo. 3. c. 35.

party of another without his consent, and against his will, with intent to convert it to the use* of the taker." So that the crime of larceny is composed of seven ingredients, which shall be considered in succession. Ingredients to constitute larceny.

1st, There must be a felonious taking; 2d, a carrying away, or removal; 3d, the thing stolen must be personal property (except in cases otherwise provided by statute, which will be observed upon), and not part of the freehold; 4th, it must be the property of another (with something like an exception in a particular case); 5th, it must be against the will and consent of the owner (except also in a particular case); and 6th, there must appear a felonious intention in the taker to convert it to his own use.

1st, then, as to the felonious taking. There must be an actual taking, that is, there must be a severance of the goods from the possession of the owner, because trespass is of the essence of felony,† and there can be no trespass where there is no *wrongful taking*.‡ But on the principle that *qui facit per alium facit per se*, the taking need not be actually by the hand of the felon; for if he conceive the project, and procure another *innocently and without any fraudulent intent* to execute it, the projector is the guilty party, and he must be charged as having executed it.§ Felonious taking.

2d, There must be what is technically called an *asportation*, a complete severance and removal, although such removal be for the smallest possible time, and over the smallest possible space. The familiar instances usually given are, a thief opening a chest, and taking out plate or other things, and laying them down on the floor, preparatory to carrying off, but being surprised and leaving them there. The removal from the chest to the floor, without a taking away further, is sufficient to constitute larceny,|| for there is now no doubt that the felony consists in the first removal, if the concomitant ingredient of *intention* be manifest. So it has been holden, that the removal Asportation.

* Hammond's case, 2 Leach, 1089.

† Hawk. c. 33.—2 East. P. C. c. 16. ‡ Ibid. § Ibid.

|| 4 Black. Com.—1 Hawk. 98.

of a parcel from one end of a stage waggon to the other, the intention to steal not being doubtful, was sufficient removal or asportation to constitute larceny.* But there must be *some* actual removal, for mere alteration of *position*, without any change of *place*, is *not* sufficient.† And there must be a *severance* also. The cases on this point are numerous;‡ but exclusive of those which affect the question of larceny from *the person* particularly, which will be considered hereafter, a very recent one, which was decided in the spirit of all the anterior ones, may suffice for illustration. B. Newman was indicted for feloniously *taking and carrying away* a piece of thread-lace from a shop. The facts were, that a card of lace lay in the shop window, one half of which was displayed by being unwrapped from the card, and hung for shew across the window, the other half remaining on the card, and the card lying on the side of the window, near a cap block which stood there. The prisoner, by means of a hook fastened to the end of a stick, drew through a cotter-hole in the window-frame all the lace which was unwrapped, and considerably *shook* the hat block, with which the remainder got entangled, but not so as actually to move it with the lace upon it from the place; nor did he sever that from the remainder which he had succeeded in drawing through the hole. This was held not to be such a *taking and carrying away* as would sustain the indictment.§

Personal
property.

3d, The thing stolen must be purely *personal property*, that is to say, it must be *unconnected with the land*, and it must be *property*, according to the strictest interpretation of the term. Minerals are the produce of the land under the surface; trees, grass, corn, fruit, &c. are the produce of the surface of the land; and buildings, and all articles affixed to them, are united with the land in legal consideration. Of these things, therefore, (though the further possession of all or most of them is rendered punishable specially by

* Coslet's case, 1 Leach, 236.

† Cherry's case, 2 East. P. C. c. 16. ‡ 1 Leach, 228. 320. &c.

§ Newman's case, O. B. 1817. 3 Dick. Pract. Expos. *tit. LARCENY*.

divers statutes hereafter to be noticed), larceny cannot be committed at common law.* But if any of these things be severed from the land, so that their intimate connection with it be interrupted and destroyed (though it be even by the thief himself), for so long a period, that the taking away after such severance cannot be considered one continued act; as, *ex. gr.* if coal or lead be raised from the mine in the day time, and laid upon the ground near the mouth of the pit, and even the person who so laid it come in the night and carry it away; or if corn be cut, or fruit plucked, and laid on the ground, and there remain for some time (without the continued presence of the thief, so as to make the taking and the carrying away liable to the presumption of being one continued act), and be afterwards taken away; such taking will be larceny.† So if one sever a copper from the brick-work in which it is set, during the day time, and come afterward in the night and take it away, such taking will be larceny.‡

And it must be *property*, that is, it must have an intrinsic value, and acquire it by relation to something else; as deeds for example: for if they relate to land, they appertain to it, and come under the last head of enquiry; and if they relate only to claims or demands, as notes, bills, and other mere securities for money, they are nothing valuable in possession, and are therefore not property of any value (according to the *common law* distinction), however provided for and protected by *statute*, hereafter to be noticed.§ So animals *feræ naturæ and unreclaimed*, as deer in a forest, conies in a warren, all kinds of wild fowls, and fish in the sea or in rivers, are considered as not property either absolute, or even qualified, and therefore larceny at common law cannot be committed of them. Certain other animals stand in the same predicament as to the offence of larceny, but for a

* 4 Black. Com. 232. But see some doubt expressed on this subject under certain circumstances, in a subsequent page, in which the operation of certain words in the 21 Geo. 3. c. 68. is considered.—P. 147.

† 1 Hawk. c. 33.—1 Hale, 510.—4 Black. Com. 233.

‡ Lee v. Ridson, 7 Taunt. 191.

§ 4 Black. Com. 234.—Webster's case, 1 Leach, 12.

different reason, viz. that they are of no intrinsic value; as dogs of all sorts, and other animals, however domesticated, which do not serve for food, directly or indirectly,* and whose value, therefore, is merely imaginary,† or accidental; and this doctrine holds even though an animal of this *base nature* be made of use by domestication and art, as in the case of ferrets kept by rat-catchers, as was decided in a case before all the judges in 1818.

Of another.

4th, It must be the *property of another*, that is, of *some other*, for it may be of a person unknown, and may so be laid: but then there must be some proof that an actual larceny has been committed against *some* person.‡ Joint-tenants, or tenants in common, of a chattel, as partners in a concern, husband and wife, cannot commit larceny of their goods, because they have a *common* interest in them.§ There sometimes occur difficulties in determining how to lay the owner's loss, but that does not militate against the general positions here laid down, and is a subject more proper to be considered in a subsequent page, which treats of the *form* of indictments.

A man may indeed rob himself, as from a carrier with whom he had entrusted his goods; or a master may steal his own goods in the possession of his servant: but then even those cases do not in reality form exceptions; for in the first of them, there is temporary fiduciary property in the carrier, but of the actual property the owner is never divested;|| and in the latter case, there is a qualified property in the servant, sufficient to support the charge of committing larceny of the property of *another*.**

Even the goods of a dead person, are the goods of *another* sufficiently to satisfy the law respecting larceny of them; for before administration they belong, in a legal view, to the ordinary, and, after administration, to the ad-

* Bees in a hive, though not tamed or domesticated, produce honey, which is food, and therefore they form an exception to the general common law rule respecting larceny. 2 East. P. C. c. 16.

† 4 Black. Com. 235.

‡ 2 Hale, 290.

§ 1 Hale, 5.3.

|| Hawk. c. 34.—Kelynge, 39.

** Fost. C. L. 123.—2 East. P. C. c. 16,

ministrator.* Even a dead man's shroud is the property of another, for it belongs to those who were at the expence of interring him.†

5th, The only concurrence of circumstances which appears to militate against the position that, "to constitute larceny, the goods must be taken *against the consent of the owner*," is where a man favours the commission of the act. It appears now to be decided, very consistently with what has been here advanced, and agreeably to justice, as well as expediency, that where a person projects the robbery for purposes of his own, and facilitates the execution, it cannot be said to be committed against his consent;‡ but that when he only suspects that others have an intention to rob him, and he merely gives facility to the execution for the purpose of detecting them, such conduct does not do away the legal inference of his dissent, but that the taking under such circumstances is a larceny.§

6th, The *felonious intention* of the person taking, in legal language, the *animus furandi*, being a conclusion or inference frequently only to be collected from circumstances, has given occasion to more cases of nice discrimination than any other portion of the general subject. When there are no circumstances to rebut the presumption of felonious intention, such presumption is necessarily involved in the naked fact of *taking the property of another without his consent*. But it is perfectly clear that there may be a *wrongful* taking, which yet will only amount to a trespass, and not to a felony; and, on the other hand, that there may be a *taking by consent*, which will nevertheless be a larceny. The variety of concomitant circumstances which must determine these questions one way or the other, are infinite in number and diversity, and a few general rules where renumeration of examples is impracticable and selection difficult, must suffice. In general terms, then, before we come to particular instances, as on the one hand

* 1 Hale, 514.

† Fort. C. L., 122.

‡ 4 Black. Com. 235.

§ R. v. Eginton, 2 R. & R. 408.

openness, publicity, day-light; wealth, rank, character; simplicity, notions of right though erroneous, and even universal practice though illegal; are all strong circumstances to negative the inference of felonious intention: on the contrary, viz. secrecy, stealth, darkness; indigence, vagrancy, and sloth; artfulness, audacity, and habitual contempt of all restraints; are all strong circumstances to indicate improper motives and to give a complexion to, perhaps, equivocal acts. Conformably with these positions are the following determined cases.

Animus furandi
negatived.

Two persons took two horses from a stable, rode them to a place at a distance, and *there left them*, proceeding on their journey on foot. The jury found that the prisoners took the horses only to forward them on their journey, and *not to make any further use of them*. This was determined to be a trespass only, not a larceny.* They were taken indeed without the consent of the owner, but the finding of the jury negatived the *animus furandi*.

Conversion
negatived.

Again, one Blyton was indicted at Nottingham summer assizes, 1791, for a larceny. The facts were these. He obtained the key of an uninhabited house, belonging to a gentleman to whom he was domestic servant. He opened the door with this key early in the morning, went into the house, and threw several loose chair bottoms, and other articles of furniture into the river Trent, which ran near to the house, and they were carried away by the stream, and never recovered. It appeared that there was no motive for this conduct but revenge for a supposed affront given by his master, and no intention of converting the goods taken to his, the servant's, use. Hotham, B. before whom the prisoner was tried, after consulting with the other judge of assize, decided that this case was without *one* of the constituent ingredients of a larceny, viz. *an intention to convert the goods to the use of the taker*, and directed the jury to acquit the prisoner.†

And even though there may be a conversion of the goods

* 2 East. P. C. c. 16. 198.

† MSS.

taken to the use of the taker, it may not, under particular circumstances, amount to a larceny; as when a tradesman's house being on fire, his neighbours, and among them the prisoner, took away many of his goods in his presence, and under the profession of saving them for the owner. The prisoner thus removed a piece of muslin and other articles. The owner on the following day went about to collect the different articles so dispersed. He asked the prisoner for the piece of muslin, and which she had taken. She denied having had it. The owner obtained a search warrant, and found it and other articles concealed in various places. The question was as to the *animus furandi* when she took the goods, for as to the subsequent conversion, there was no doubt. The jury found specially that she did not take the goods with a felonious intention, but with a laudable design, and that the felonious design suggested itself to her mind *afterwards*. The judges were consulted, and they determined that, as the jury had negatived by their finding the *animus furandi* at the time of taking, it was not a *felonious* taking, and the prisoner was discharged.*

A plausible claim of right, though founded in mistake, Claim of right. will rebut the presumption of the *animus furandi*; as where a Lord of a Manor, claiming right of a waif and stray, seizes a horse *damage feasant* as an estray, though it turn out that he had no right to him; yet, unless he alter his marks so as to disguise him, or do some other act which betrays dishonest design, the claim of right rebuts the presumption of any *animus furandi*, or † felonious intention.

But the claim of right must be a *prima facie* legal claim, not a claim which has no foundation in law, as a claim of right to glean corn over another's lands; ‡ or to plunder a wreck; § merely because such usages have been commonly practised, or long acquiesced in.

* Leigh's case, 2 East. P. C. c. 16.

† 1 Hale, 596.

‡ 2 Hawk. c. 33.—Steel v. Houghton, H. Black. R. 51, 63.

§ 1 Black. Com. 290.—Hamilton v. Davis, 5 Bur. R. 2932.

Possession by
finding.

It has been determined that the fortunate finder of any thing valuable has, by virtue of such finding, a title to it against all the world except the owner; * therefore, with respect to property so taken, no *animus furandi* can be implied from a *conversion to the use of the taker*, except where the real owner is discoverable, and any artful means taken to conceal the discovery from him; but, where the owner is known, or where common enquiry, or reasonable diligence, must have led to a discovery of him, and that is omitted; and more especially, if any artifice be used to prevent such discovery; in such cases the *animus furandi* is reasonably to be presumed from such concealment accompanied by a conversion to the use of the finder. On the ground of this distinction, the drivers of coaches have been convicted of larceny, for concealing, &c. parcels left by passengers in their respective carriages; † tailors for concealing money, &c. found in clothes entrusted to them for repair; carpenters and cabinet makers for similar practices respecting valuables concealed in chests and cabinets sent to them to be mended; ‡ for it is the duty of every man who finds property, to restore it to the owner, if known; and if not known, to use all due diligence to discover him, on the failure of which alone, such finder can have any legal right to convert treasure here to his own use.

By delivery.

Property parted with by voluntary delivery of the owner cannot, *prima facie*, be the subject of an indictment for larceny, because, as we have seen, a constituent ingredient in this crime is the *non-consent* of the owner to the transfer. But the modern interpretation of this axiom makes an important distinction between the owner delivering the *actual property*, and only delivering the *possession of that property*. §

* *Armery v. Delemire*, 1 Str. 505.

† *Lamb's case*, 2 East. P. C. c. 16. s. 99.—*Wynne's case*, *Ibid.*—1 Leach, 415, (in note).

‡ *Cartwright v. Green*, 8 Vez. R. 409.

§ See *Walsh's case*, 2 Leach, 1054. & 4 Taunt. 258. & *post*, Statutable *Larcenies*.

Thus, a horse was *agreed to be purchased* for a certain sum, and in pursuance of such agreement was delivered by the owner to the pretended purchaser, who immediately rode away with it without paying the purchase-money agreed upon. In this case, the owner parted voluntarily with *the property itself* in fulfilment of his (imprudent) contract; and therefore it was holden not to be larceny.*

But where one hired a horse of another *for the day*, and having got possession of it, rode off and sold it, only the qualified possession of the horse was parted with, not the actual property in it, and it was held larceny, there being no doubt but he hired it *animus furandi*.† So where the hiring was of a carriage for an *indefinite time*, yet not being returned, and the jury being of opinion that it was hired *animus furandi*, it was holden larceny; ‡ for in this case also the possession only, not the property, was parted with.

In the case of a shop-keeper agreeing to *sell* certain goods to a customer for ready money, sends them to him with a bill of parcel by his servant, who receives for them, instead of the ready money agreed for, two bills of exchange, which bills afterwards turn out to be bad. Though there was no intention to give *credit* by the tradesman, yet he in fact parted with *the property*, and this was no larceny in the customer, § though the jury were satisfied that the *animus furandi* existed when the goods were ordered.

But where one ordered goods to be brought to his house from a tradesman's shop to look at, that he might choose part of them, and when brought he did so, and separated what he approved of and laid them by themselves, and then contrived to send the tradesman home for more, under pretence that there were not sufficient variety, and while he was gone for them, the customer ran away with the whole which had been left at his house, it was held by all the judges that there had not been sufficient pass to change

* Harvey's case, 1 Leach, 528.

† Pear's case, 1 Leach, 253—Patch's case, 1 Leach, 238.

‡ Temple's case, 1 Leach, 470.

§ Parker's case, 2 East. P. C. c. 16.

the *property* in the goods, and there being sufficient to infer an original intention to steal the property from the tradesman, it was larceny.*

Decisions almost *ad infinitum*, at least to such an extent, that a work, wherein cases are only admitted in illustration of principles, cannot embrace them, might be adduced in confirmation of the doctrines advanced; but, as the chief difficulty which most commonly attends this class of cases, and generally forms one of the prominent objections taken by counsel, arises out of the nicety necessary to discriminate this species of crime, constructive felony, from that of *fraudulently obtaining goods by false pretences*: which latter not only comprises a distinct description of offence in point of grammatical, but also of legal, accuracy; this kind of investigation shall be closed by the notice of two cases, extremely similar in their leading features, which, though not perhaps the *most* recent, or the most authoritative, which might be given, are of recent occurrence, and appear to place the solution of the difficulty in a point of view particularly clear.†

The prisoner was indicted for feloniously stealing, &c. divers quantities of bacon, cheese, &c. &c. and the material facts of the case were as follow.

A woman professing herself to be the wife of one William Jones, went to a cheesemonger's shop, and agreed for two sides of bacon, several cheeses, some casks of butter, and other articles, and directed them to be sent to a small shop which she said her husband had taken for a retail trade in a distant part of the town; she desired that "they might be sent thither at a particular time in the evening, when her husband would be at home, and he would pay the person that brought them." The cheese-

* Sharpless's and Greatrix's case, East. P. C. c. 16.

† They were both commitments from the public office Worship Street, and were vigorously contested, as well at the time of commitment, as at that of trial. It should be observed, that they are not introduced as *authorities*, properly so denominated, but merely as occurrences aptly illustrative of the subject under consideration.

monger sent the articles, as much in quantity as a man could take on a truck, by his porter at the hour appointed, with an accompanying written bill of parcels, and a verbal order not to take any paper in payment for them but Bank of England notes. When the porter arrived at the street, he had some difficulty in finding the shop, and made many fruitless inquiries for the name of Jones, but could hear of no such person being there: he was about to return, when the woman who had ordered the articles came up to him, and pretended to be looking for him, in consequence of his being past his time, and that her husband was in haste to go out to an appointment. He answered that "he had been some time looking about for her shop, but could not find it, and could not by inquiry make out any such name in the street." She said that she did not wonder at that, for they had only been in the house a day or two, and were strangers in that part of the town, but she would show him the way. She then led him to a place, not indeed far distant, but by no means answering the description she had given when she ordered the articles. When they arrived at the shop, there was no one in it but a boy, having the appearance of an apprentice, who immediately said, "My master was tired of waiting for you, and is gone to meet a man who is to pay him some money at the public house at the corner of the street; and desires you will go there to receive the pay for the bacon and cheese." The porter not suspecting any fraud, and observing that the public house was in sight, set down his load in the shop, and went with the woman to the public house mentioned. As they were going into the house, they met a man in the passage who accosted the woman with "Are you come for your husband, Mrs. Jones? to which the woman replied in the affirmative. He then said, "He is just gone, and bade me tell you to follow him to the public house in the next street, which is *that* the person frequents who is to pay him his money." The woman and the porter accordingly proceeded to the public house described. It was now getting dusk, and as soon as they arrived at the house in question, the woman went in first, and ran quick through the house into a yard behind it, which has a com-

munication by means of a gate, with another street. The porter, after a few moments' deliberation, ran into the yard after her, but no trace of her appearing, he suspected some imposition, and went back to the shop where he had left the goods. The door was shut, and on inquiry, he learned that the boy whom he had left there, and a man answering the description of him whom he had met in the passage of the first public house, had left the shop a short time before, loaded with goods answering the description of those which he had himself set down in the shop. With very little exertion he burst open the door, where he found nothing in it but a counter, and *that* made of the shutters belonging to the shop window, and only nailed together in the slightest manner, being supported at one end on the window sill, and at the other on an old barrel. He moreover discovered that a man answering the description of the man whom he had met in the public house, but calling himself by a different name from that of Jones, had hired the room only in the morning of that day, and was wholly unknown in the neighbourhood, but had deposited a week's rent. She was not seen again till many weeks after the transaction, and then was making a similar attempt in another place. At the time of trial, numerous objections were taken, but the only ones which especially apply in this place, were that, even assuming that the woman was a guilty party, she was only guilty of a fraud in obtaining goods under false pretences, and therefore it was no felony; and also, that there was a complete voluntary unconditional delivery of the *property* by the cheesemonger's servant on behalf of his master, in confidence of future payment. The court and jury however decided, that there was evidence sufficient in the circumstances altogether to show the *animus furandi* at the time the prisoner ordered the goods, and that, though the possession was parted with by the folly of the porter, the property was not changed, and the prisoner was convicted.*

* See 2 East. P. C. c. 16. s. 12. note (a), and Wilkins's case, 1 Leach, 520.

The other was a case occurring within the same week, and differing from the last only in that particular feature of discrimination under immediate consideration. The prisoner, a female, took a room in a street leading out of Smithfield, and dealt in a very small way in tea, sugar, and candles. She *paid her way*, as the phrase is, for several weeks. The offence in question arose in the following way:—She went to a shop in Clerkenwell and inquired the prices of candles and other articles; on being satisfied, she observed, that she did not want any just then, but she should do hereafter, for she dealt in those articles, and had hitherto bought of M. B. a great chandler in Smithfield, but her customers did not like his candles. She supposed, however, if M. B. gave her a character for punctuality, *they*, the traders in Clerkenwell, would serve her and give her a month's credit. They assented to the conditions, knowing M. B. particularly well. A few days after, she returned with a written passage book, of debtor and creditor account, purporting to be an account of goods delivered, and of monies paid by her to the house of M. B. and to have been settled from time to time by persons in M. B.'s employ. *On the faith of this book* so exhibited, she got credit for goods to the amount of 5*l.* which she punctually paid; then of 10*l.* which she also punctually discharged at the time agreed upon: Then she got credit for 20*l.* but was heard of no more, till several months after, when it was discovered that she had departed from her residence privately, and had defrauded other tradesmen in a similar manner, at several different residences in succession, in different parts of the town. It was also ascertained, that no such person had ever kept an account at the house of M. B. and that she had sold the particular candles in question at an inferior price as soon as she received them. She was committed for the fraud, and indicted for a misdemeanour.

At her trial it was objected that this was a felony, or nothing; that though it was true she did not pay the demand at the time she *engaged to do*, *non constat* that she did not, and does not even yet, intend to pay it; and that

as to her change of residence, *that* might be matter of necessity, indicative of no fraudulent intention; that if fraudulent intention *must* be presumed, it took place at the time of her giving the order for the goods; that she did it *animo furandi*; and that the mode of proceeding to punish it had been mistaken, for that the offence, if any, was a felony, not a misdemeanour. The objection, however, was over-ruled, and the prisoner convicted.*

Larcenies, and some other heinous offences, punished by statute.

Having noticed generally the line of distinction between those larcenies at common law which are ordinarily holden cognizable before a court of session of the peace, and those which are usually in practice reserved for the higher tribunals, accompanied by observations on such qualities as are common to both descriptions; it is but a necessary completion of the professed purpose of the work, to take also a cursory view of some felonies, as well as some other of the more heinous species of offences, that are directly, or indirectly, made referable *by statute* to the inferior authority particularly. As many of the offences *by statute*, which come under the description of larceny, are not only cognizable *in law* like all felonies, but are also *in practice* usually taken cognizance of by courts of session of the peace, without any distinction respecting *value*, it is necessary to introduce the notice of these statutable larcenies by a preliminary observation or two, on the direct influence which these particular provisions have on them. The nature of the crimes, then, is not, cannot be, changed by the statutes in contemplation; for the nature of a theft cannot be divested of its characteristic,† but it must ever remain a theft,

* Perhaps, at least, a more *plausible* defence to this accusation would have been, that the *false pretence* used to gain the credit, viz. the passage-book, and to the exhibition of which the credit is actually stated to have been given, only could have been referable to the *first* delivery of goods to the amount of 5*l.*; for, at the time of delivery of the *last* parcel of candles to the value of 20*l.* which forms the subject of this prosecution, the prisoner's credit was established on a different ground, and independent of the first transaction, viz. on her own punctuality in discharging her accounts with the prosecutor.

† See East. P. C. c. 16. s. 70.

though it be directed by a statute, that if committed under particular circumstances, or accompanied by particular adjuncts or concomitants, it shall not be *punished after the old manner* of felonies, but after the accustomed manner of an inferior species of crime, viz. misdemeanours. Thus, if the language of a statute be, that such, or such an act; as, *ex. gr.* a felonious taking, or a receiving, under such, or such circumstances; shall be punished as a *misdemeanour*, or *by fine and imprisonment*, or *by transportation for a certain term*, or if any other words be used, in describing the punishment, to the same effect (without any relation to value in the case of larceny; or in the case of other offences, to the quality of the offence, by superadding any reference to the punishment of crimes of a more aggravated description *); such words do not, nor are they intended to, alter the nature of the offence, but only to prescribe the limit of the punishment; and in that case are uniformly interpreted (except indeed any particular jurisdiction be given, or prohibited, by the statute itself) not only to recognize, but even, as it were, to recommend, the jurisdiction of the sessions of the peace, over the offence so pointed out.

Some of the statutes, which might reasonably be supposed to come within the above assigned limit of observation, however, having become obsolete, or rather, perhaps, superseded in practice by the more essential, or more appropriate modern provisions,† are, for obvious reasons, omitted here. Those which have an imperative claim to notice are the following:

The 4 Geo. 2. c. 32. is for the more effectual punishing Larceny by stealers of lead or iron bars fixed to houses, or any fences stealing lead, iron, &c. from belonging thereto. And enacts that "every person who houses, &c. shall steal, rip, cut, or break with intent to steal, any lead,† 4 Geo. 2. c. 32.

* As in 54 Geo. 3. c. 101. against child-stealing, where it says, "offenders shall be punished as persons guilty of *grand larceny*;" wherefore courts of session, which generally abstain from trying offences above petty larceny, do not usually entertain prosecutions for *this* offence.

† See East. P. C. c. 16.

‡ A casement made of lead, iron, and glass, was determined not to be within this statute. Senior's case, 1 Leach, 227.

iron bar, iron gate, iron palisadoe, or iron rail, fixed to any dwelling-house, out-house, coach-house, stable, or other building used or occupied with such dwelling-house, or thereunto belonging, or to any other building whatsoever,* or fixed in any garden, orchard, court-yard, fence, or outlet belonging to any house or other building,† shall be deemed and construed to be guilty of felony,"‡ and the court before whom tried shall have authority to transport for the said offences for seven years.§ And aiders and abettors in the stealing, and receivers of any of the said goods, shall be liable to the same punishment.

29 Geo. 2. c. 30. The foregoing act was followed by another of 29 Geo. 2. c. 30. for *more effectually* discouraging the offences mentioned in the former. The intentions of the legislature in passing this act were various. First, as its preamble declares, to punish receivers more severely, by a specific punishment of transportation for fourteen years (instead of the seven imposed by the former statute), although the principal felon should not have been convicted. Secondly, to subject *such offenders* to a more summary mode of discovery, and a conviction, in addition to that by indictment, viz. before two justices of the peace. Thirdly, to enlarge the *description of articles*, for the receiving of which, there being reason to suppose them stolen, such receivers should be amenable to the punishments inflicted by it, which is effected by the mention of copper, brass, bell-metal, and solder, in addition to those of lead and iron, inserted in the former statute; and also to extend the description of the *premises to which* they should appertain, as well as the manner *in which* they should so appertain. This is effected by the words *lying or being in or upon, houses, outhouses, mills, warehouses, work-*

* A church is within the act. Hickman's case. Id. 137.

† Rails to a tomb-stone not connected with the church by contiguity are not within the act. R. v. Davies, East. P. C. c. 16.

‡ A person having a house for the purpose of stripping it of the lead is within the provisions of the act. Munday's case, Ibid.

§ Defendant under this act may be convicted, and have judgment for petty larceny. East, P. C. c. 16.

shops, areas, vaults, yards, gardens, orchards, ships, barges, lighters, boats, and other vessels.

The next statute relating to the same general subject is 21 Geo. 3. c. 68. It begins by reciting the 4 Geo. 2. lately noticed, and then proceeds as follows. "And whereas the stealing of copper, brass, and bell-metal *affixed to dwelling-houses and the appurtenances thereto, is not expressly prohibited and made punishable by the said recited act,*" &c. every person who shall (thenceforth) "*steal, rip, cut, break, or remove, with intent to steal, any copper, brass, bell-metal, utensil, or fixture,* being fixed to any dwelling-house, out-house, coach-house, stable, or other building, used or occupied with such dwelling-house, or thereto belonging, or to any other building whatsoever, or fixed in any garden, orchard, court-yard, fence, or outlet belonging to any dwelling-house, or other building, or any iron rail or fencing, set up or fixed in any square, court, or other place, (such person having no title or claim of title thereto,) shall be deemed and construed to be guilty of felony; and the court by and before whom such person shall be tried and convicted, shall have power and authority to transport such felon for the term of seven years; or to order and direct that such felon be kept and detained in prison, and therein kept to hard labour, for any time not exceeding three years, nor less than one; and within that time, if such court shall think fit, such offender shall be once or oftener, but not*

Stealing, and removing with intent to steal, other articles from houses, &c.
21 Geo. 3. c. 68.

* The paragraph in Italics is worthy of particular observation. The words brass, copper, bell-metal, utensil, or fixture, are here *pointed* as they stand in the statute-book. If they are all to be used *substantively*, as seems the grammatical construction, it does away with the old objection, respecting larceny not being to be committed of any thing affixed to the freehold; for in that way of interpreting the words, *ANY utensil, and ANY fixture*, of whatever kind or composition, is within the statute. It has generally, indeed, been taken for granted, that utensils made of copper, brass, or bell-metal, were alone *designed* to be protected; but that interpretation was only to be supported by using *copper, brass, and bell-metal*, adjectively, and applying them to the substantives *utensil and fixture*, in defiance of all grammatical construction of the sentence, as influenced by accurate punctuation.

more than thrice, publicly whipped." The statute goes on to annex similar punishment to all aiders, abettors, receivers, &c. although the principal felon shall not have been convicted.

21 Geo. 3. c. 60. The last noticed statute was followed by another of the same session, adding *pewter pots*, and *other pewter*, to the articles enumerated by the former, and annexing the same description of punishments to the conviction of the offence, as well on the principals as the accessories, as had been prescribed by the immediately preceding statute.

Larceny by
stealing lead or
black cawke,
called black
lead.

25 Geo. 2. c. 10.

By 25 Geo. 2. c. 10. the offence of breaking and by force entering into, mines of wad, or cawke, commonly called black-lead, or into any wad-hole, or pit, shaft, or adit, or vein of the same, with intent to steal, or actually stealing there from the same, with the offence of aiding, abetting, or assisting, or commanding any such offence, are declared to be felonies, punishable by commitment to the prison or goal of the county, or to some house of correction within the same, for a time not exceeding one year, with hard labour during the time, and public whipping by the common hangman, or by the master of such house of correction, at such times, and in such manner, as the court shall think proper; or to transportation for a term not exceeding seven years.

Persons transported, and returning from transportation before the expiration of their term declared to be guilty of felony *sans* clergy. Receivers, knowing the goods to be stolen, to be guilty of felony, and punished as persons are by the laws of the realm who have bought or received stolen goods knowingly.

Larceny by
embezzlement
of clerks and
servants.

39 Geo. 3. c. 85.

The stat. 39 Geo. 3. c. 85. is entitled, "an act to protect masters against embezzlements by their servants." After reciting that "whereas bankers, merchants, and others, are in the course of their dealings and transactions frequently obliged to trust their servants, clerks and persons employed by them in the like capacity of receiving, paying, negotiating, exchanging, or transferring money, goods, bonds, bills, notes, bankers' drafts, and other valuable effects and securities: and whereas doubts have been entertained whether the embezzling the same by such servants, clerks, and others so

employed by their masters amounts to felony by the law of England,* and it is expedient that such offences should be punished in the same manner in both parts of the united kingdom," enacts and declares that "if any servant or clerk, or any person employed for the purpose in the capacity of a servant or clerk to any person or persons whomsoever, or to any body corporate or politic, shall, *by virtue of such employment*, receive or take into his possession any money, goods, bond, bill, note, banker's draft, or other valuable security or effects, for or in the name, or on the account of his master or masters, or employer or employers, and shall fraudulently embezzle, secrete, or make away with the same, or any part thereof, every such offender shall be deemed to have feloniously stolen the same from his master or masters, employer or employers, for whose use, or in whose name or names, or on whose account the same was or were delivered to or taken into the possession of such servant, clerk, or other person so employed, although such money, goods, bond, bill, note, banker's draft, or other valuable security, was or were no otherwise received into the possession of his or their servant, clerk, or other person so employed; and every such offender, his adviser, procurer, aider, or abettor, being thereof lawfully convicted or attainted, shall be liable to be transported to such parts beyond the seas as his Majesty by and with the advice of his privy council shall appoint, for any term not exceeding fourteen years, in the discretion of the court before whom such offender shall be convicted or adjudged." †

* Bazeley's case, 1 Leach, 293.

† Some observations occur on the construction of the different parts of this act, short as it is.

1. Respecting the persons employed as servants, &c. being very indefinitely described. The construction generally given to the words, "*by virtue of such employment*," has been that, in indictments under its authority, it would be necessary to show *either* that the servant had a special direction to receive money for his employer, or that his office was of such a description that such power must be inferred. As for example, it is necessarily inferred, from the nature of the office, that a book-keeper, in a coach or waggon counting-house, is authorized to receive money for

Larceny by
collectors, re-
ceivers, &c. of
public money.
50 Geo. 3, c. 59.

By statute 50 Geo. 3. c. 59. reciting, that it was most expedient that due provision should be made more effectually to prevent the embezzlement of money or securities for money belonging to the public by any collector, receiver, or other officer entrusted with the receipt, custody, or management thereof: it is enacted, That if any person to whom any money or securities for money shall be issued for public services, shall, from and after the passing of the act, embezzle such money, or in any manner fraudulently apply the same to his own use or benefit, or for any purpose whatever, except for public services, every such person so offending, and being thereof duly convicted according to law, in any part of the united kingdom, shall be adjudged guilty of a misdemeanour, and shall be sentenced to be transported beyond the sea, or to receive such other punishment as may by law be inflicted on persons guilty of misdemeanours, and as the court before which such offenders may be tried and convicted shall adjudge. § 1.

If any such officer, collector, or receiver, so entrusted with the receipt, custody, or management of any part of the

his principal, but *non constat* that the driver of, or porter to, such coach or waggon, is such a servant as is authorized by his situation to receive payment for the delivery of goods; therefore, to bring such kind of person within this statute, a special authority must be shown, or at least a continual practice of receiving to an extent, that such authority must be implied. So, of a butcher's boy who carried out his master's meat, a brewer's drayman who delivered his beer, or (which has been a case under consideration) the navigator of a boat, who carried and delivered goods for a boat-owner carrying for hire on a navigable river.—MSS. opinion of Mr. Dampier on a case referred to him by a court of quarter session, while he was at the bar.

2. An indictment on this statute must have the requisites of an indictment at common law, and state the articles taken to be the property of some person. 3 B. & P. 106.

3. If a person take money in one county, and deny such receipt in another county, he may be well tried in such latter county; but perhaps in either, if there be evidence to show that the original taking was with design to embezzle.

4. To warrant a judgment upon this statute, the words of the act must be followed in describing the offence, but a count may be added for a simple larceny. 2 East. P. C. c. 18.—Starkie Ind. 431.

public revenues, shall knowingly furnish false statements or returns of the sums of money collected by him or entrusted to his care, or of the balances of money in his hands or under his control, such officer, collector, or receiver, so offending, and being thereof convicted, shall be adjudged guilty of a misdemeanour, and shall be adjudged to suffer the punishment of fine and imprisonment, at the discretion of the court, and be rendered for ever incapable of holding or enjoying any office under the crown. § 2.

Now, by stat. 52 Geo. 3. c. 63. the provisions against this description of offence are extended as far as the subject seems capable of, for it enacts, "that if any person with whom (as banker, merchant, broker, attorney, or agent of *any description whatever*) any ordnance debenture, exchequer bill, navy, victualling, or transport bill, or other bill, warrant, or order for the payment of money, state lottery ticket, or certificate, seaman's ticket, bank receipt for payment of any loan, *India* bond, or other bond, or any deed, note, or other security for money, or for any share or interest in any national stock, or fund of this or any other country, or in the stock or fund of any corporation, company, or society; established by act of parliament or royal charter, or any power of attorney for the sale or transfer of any such stock or fund, or any share or interest therein, or any plate, jewels, or other *personal effects*, shall have been *deposited*, or shall be or remain for safe custody, or for any special purpose, without any authority, either general, special, conditional, or discretionary, to sell or pledge such debenture, bill, &c. &c. or to sell, transfer, or pledge, the stock or fund, &c. &c. or share, &c. in such stock or fund, &c. to which such security or power, &c. shall relate, shall sell, negotiate, transfer, assign, pledge, embezzle, secrete, or in *any manner apply* to his own benefit any such debenture, bill, &c. &c. in violation of good faith, and contrary to the special purpose for which the things before mentioned, or any of them, shall have been deposited, or shall have been or remained in the hands of such person, with intent to defraud the owner of any such instrument, &c. or the person depositing the same, &c. Every person so offending in *Great Britain and Ireland*, shall be deemed guilty

Larceny by
agents of all
descriptions.
52 Geo. 3. c. 63.

of a misdemeanour, and being convicted thereof, shall be sentenced to transportation for any term not exceeding fourteen years, or may receive such other punishment as may be by law inflicted on a person guilty of a misdemeanour, and as the court shall adjudge. § 1.

And if any banker, merchant, broker, attorney, or other agent, in whose hands any sum of money, bill, note, draft, cheque, or order for payment of money shall be placed, *with orders in writing, signed by the party depositing the same*, to invest such sum of money, or the money to which such bill, note, &c. as aforesaid shall relate, in the purchase of any stock, &c. or in government or other securities, *or in any other way specified in such orders*, shall in any manner apply to his own use and benefit any such sum of money, bill, note, &c. &c. before mentioned, in violation of good faith, &c. and contrary to the special purpose specified, &c. with intent to defraud, &c. shall in like manner be deemed guilty of a misdemeanour, and incur such punishment as aforesaid, &c. § 2.*

But this act not to prevent persons hereinbefore mentioned receiving money due on securities before mentioned. § 3.

Nor to extend to partners not privy to the offence. § 4.

Nor to prevent bankers from disposing of securities on which they have a lien. § 8.

A statute of Queen Eliz. viz. 8 Eliz. c. 4. had (*inter alia*)

Larceny from
the person.
48 Geo. 3.
c. 129.

* This statute was passed in order to remedy the defects of the former statutes disclosed by the judgment in Walsh's case. 4 Taunt. 258. It is to be observed, that the first section relates to the articles therein mentioned which are *deposited for safe custody only*. The second to such as are *confided for the very purpose of being disposed of*, but to some special application, which special application must be signified *in writing* by the party confiding the object of trust; and the terms on which these deposits have been respectively made, must be proved to have been strictly enforced, in order to bring any embezzlement, or improper application of the valuables deposited, within the provisions of the statute; in other words, to take the case out of the application of the ordinary distinction respecting the *delivery* of property, or securities for it, already explained. P. 138.

made the crime of "feloniously taking any money, goods, or chattels, from the person of any other privily without his knowledge," a felony *sans* clergy. The statute 48 Geo. 3. c. 129. repeals so much of the former as has been recited, and enacts, that "every person who shall at any time, and in any place whatsoever, feloniously steal, take, and carry away, any money, goods, or chattels, from the person of any other, *whether privily without his knowledge, or not, but without such force or putting in fear as is sufficient* to constitute the crime of robbery, or who shall be present *aiding and abetting therein*, shall be liable to be transported beyond the seas for life, or for a term not less than seven years; or to be imprisoned only; or to be imprisoned and kept to hard labour; in gaol, house of correction, or penitentiary house, not exceeding three years.

The 51 Geo. 3. c. 41. repeals so much of a previous act of 18 Geo. 2. c. 27. as made the feloniously stealing, &c. linen, fustian, and cotton goods, in buildings, fields, grounds, and other places for printing, whitening, bleaching or dyeing the same, felony *sans* clergy; and enacts, that feloniously stealing these articles, or any of them, to the value of 10s. with all *aiders, assistants, procurers, receivers, &c.* shall be liable to be transported for life, or for a term not less than seven years; or to imprisonment in gaol, house of correction, or penitentiary, for a term not exceeding seven years.

Larceny from
bleaching-
grounds, &c.
51 Geo. 3. c. 41.

The 7 Geo. 2. c. 21. enacts, that "if any person shall *with any offensive weapon or instrument,** unlawfully and maliciously assault; or† shall by menaces, or in or by any

Intent to com-
mit larceny.
7 Geo. 2. c. 21.

* In early cases after the passing of this statute, it seems to have been doubted what kinds of offensive instruments come within this description; but modern decisions seem to include every thing, even to a stick, if it be such a size as to be capable of doing injury to the person, and any violence with it be actually exercised. *Monteth's case*. 2 Leach, 702.—1 East. P. C. c. 8.

† This statute comprises two specific substances: 1st, Assaulting with any offensive weapon, with the intent specified. 2d, Using menaces, or other violent means to produce similar intimidation, for the same purpose. *Jackson v. Randal*, 1 Leach, 267. But the intent

forcible or violent manner, demand any money, goods, or chattels, of or from any other person, with felonious intent to rob or commit robbery upon such person,* shall be adjudged guilty of felony, and be liable to be transported for seven years.

Accessories to larcenies.

In the progress of discussing the various larcenies rendered amenable, directly, or indirectly, to the court of sessions of the peace, by statute, the frequent occurrence of provisions respecting accessories to these statutable larcenies, renders some exclusive and connected notice of other acts, which more particularly respect them, necessary in this place. Accessary, as a colloquial term, comprehends all persons who contribute to the counselling, contriving, encouraging, executing, completing, and, as it were, sanctioning, the crime of the principal. According to technical precision, at least as far as is necessary for our purpose here, accessories are divided into, 1st, counsellors, 2dly, aiders and abettors, and, 3dly, receivers. Counsellors, there can be no doubt, *ex vi termini*, means accessories *before* the fact; aiders and abettors are persons present and assisting *at* the commission of the offence, or at least in such a situation as, by their presence, to encourage it; and receivers, accessories *after* the fact. Such are the accessories intended in the various statutes which have been noticed; and it is necessary to observe, that the *receivers mentioned in them* (the principal subject of consideration here), are not, what was understood by receivers at the common law, viz. receivers of the felon, otherwise denominated *comforter*, but receivers of the stolen goods. With these few preliminary observations, we proceed to the statutes themselves, in the order in which they occur.

may be collected from circumstances, without any actual demand of money, &c. being made. *R. v. Trusty et al.* 1 East. P. C. c. 8.

* The assault must be upon the person intended to be robbed, to satisfy the words *such person*. An assault upon the driver of a chaise, in order to rob the passengers within, *ex. gr.* would not be within the statute. *Thomas's case*, 1 Leach, 330.

By 3 Wm. & Ma. it is enacted, that "If any person or 3 Wm. & Ma. persons shall receive any goods or chattel,* that shall be ^{c. 9.} feloniously taken or stolen from any other person, knowing the same to be stolen, he or they shall be detained as accessory or accessaries after the fact, and shall incur the same punishment as an accessory or accessaries to the felony after the felony committed."

"It shall and may be lawful (thenceforth) to prosecute 1 Anne, c. 9. and punish every person or persons buying or receiving any stolen goods, knowing the same to be stolen, as for a misdemeanour, to be punished by fine and imprisonment, although the principal felon be not before convicted of the said felony, which shall exempt the offender from being punished as accessory, if the principal shall be afterwards convicted."

The first section of 5 Anne, c. 31. enacts, that those 5 Anne, c. 31. who receive or buy any goods or chattels feloniously stolen or taken by, or shall receive, harbour, or conceal, any burglars, felons, or thieves, knowing them so to be, shall be taken and received as accessaries to the said felons, and shall suffer as the principals.

Sect. 2. enacts, that if the principal cannot be taken, every person *buying or receiving* any goods stolen by any principal felon, knowing the same to be stolen, may be prosecuted and punished as for a misdemeanor, by fine and imprisonment, or other corporal punishment, as the court shall think fit, although the principal felon be not before convicted, &c.

The 2 Geo. 3. c. 28. enacts, that every person who 2 Geo. 3. c. 28. shall buy or receive any part of the cargo or loading of, or any goods, stores, or things, belonging to any ship or vessel in the river Thames, knowing the same to be stolen, or unlawfully come by; or shall privately buy or receive any such goods, &c. *by suffering any door, window, or shutter to be left open or unfastened between sun-setting and sun-rising for that purpose*; or shall buy or receive the

* This does not extend to money. Guy's case, 1 Leach, 121. Nor to bank notes, bills, &c. R. v. Sedy et al. 1 Leach, 216.

same, or any of them at any time, in any clandestine manner, from any person or persons whomsoever, shall, being convicted thereof by due course of law (although the principal felon or felons, offender or offenders, has or have not been convicted of stealing or unlawfully procuring the same,) be transported for fourteen years to (any of his Majesty's colonies, &c.

39 & 40 Geo. 3. c. 87. By 39 & 40 Geo. 3. c. 87. the right of traversing indictments made under this statute, is taken away.

10 Geo. 3. c. 48. By 10 Geo. 3. c. 48. it is enacted, that every person who shall buy or receive any stolen *jewels, * gold or silver plate, watch or watches*, knowing the same to have been stolen, shall, in all cases where such jewels, plate, &c. shall have been feloniously stolen, accompanied with a burglary actually committed in stealing the same, or shall have been feloniously taken by a robbery on the highway, be triable as well before conviction of the principal felon in such felony, burglary, or robbery, whether he shall be in, or out of custody, as after his conviction. And if any person, so *buying or receiving* such jewels or plate, shall be convicted thereof, he shall be adjudged guilty of felony, and be transported, &c. for fourteen years.

13 Geo. 3. c. 31. By 13 Geo. 3. c. 31. persons feloniously stealing, as well as receivers of *money, cattle, goods, or other effects* stolen or feloniously taken in either part of the united kingdom, shall be liable to be indicted, tried, and punished, in that part of it where he, she, or they shall *have or receive* the same.

22 Geo. 3. c. 58. The 22 Geo. 3. c. 58. enacts that *in all cases whatsoever when any goods or chattels*, except lead, iron, copper, brass, bell-metal, and solder, (*especially protected by the other statutes already recited*), shall have been feloniously stolen or taken, whether the offence of the person or persons so taking or stealing the same shall amount to grand larceny, or some greater offence, or to petit larceny only (except where the person or persons actually committing the felony

* Cornelian (or other precious stones, by parity of reasoning) set on seals, are jewels within this description. R. v. Moses, East. P. C. c. 16.

shall have been already convicted of grand larceny, or some greater offence), every person who shall buy or receive any such goods and chattels, knowing the same to have been so taken or stolen, shall be held and deemed guilty of, and may be prosecuted for a misdemeanour, and shall be punished by fine, imprisonment, or whipping, as *the court of quarter sessions, who are hereby empowered to try such offender*, or as any other court before which he, she, or they shall be tried, shall think fit to inflict; although the principal felon or felons be not before convicted of the said felony, and whether he, she, or they, is or are amenable to justice or not: and in cases where the felony committed amounts to grand larceny, or greater offence, when the person actually committing such felony shall not be before convicted, such offender or offenders shall be exempted from being punished as accessary or accessaries, if such principal felon or felons shall be afterwards convicted.

By sect. 2. search-warrants may be granted by justices; and persons in whose custody such stolen goods shall be found, they being privy thereto, shall be held accessaries, and guilty of a misdemeanour.

Such are the *statutable* provisions respecting accessaries, so far as the object of the present inquiry render them a subject of interest, which indeed is extremely limited, inasmuch as in petit larcenies, and other offences inferior to felony, there are no accessaries at common law, all being principals: * The reason given for which is, that in the lowest description of offences it is below the dignity of the law to make distinctions.† On the subject of those accessaries after the fact, receivers, who, we have seen, are the principle objects of the foregoing statutes, and for the conviction and punishment of whom, as being the prolific source of larcenous depredations, the legislature has manifested such anxiety, some few additional observations appear to be necessary. It has been already observed, that *receivers*, according to the common-law interpretation of the word, were those who received, or in any way assisted, the of-

* 2 Inst. 183.—2 Hawk. c. 29.

† Black. Com. 36.

fender himself; but a receiving of the thing stolen by such offender, being only a misdemeanour at common law, punishable after the conviction or outlawry of the principal, by fine and imprisonment,* it was thought necessary by the legislature to subject these receivers of stolen goods to severer, as well as more definite, punishment, by making them *accessaries after the fact*; and also to render them amenable to trial and punishment, independently of the conviction of the principal. For these reasons the statutes which have been just recited, were enacted. The few following decisions afford considerable illustrations of the general purview and design of them.

To constitute a guilty receiver, he must *know the goods to have been stolen*, according to the words of the statutes. But it is not necessary, or indeed it is seldom possible, to give direct evidence of that fact; but it is to be collected by inference from circumstances in evidence, as purchasing at an unreasonably low, and therefore at a suspicious, price; at a very unseasonable hour, &c.†

The things received must properly come under the denomination of goods; for when a *woman* was indicted for stealing a pocket-book, *containing* certain gold coin, and a bank-note, and at the same time a *man* for receiving the same, knowing them to have been stolen, the woman was convicted of the stealing; but though there was evidence of the man receiving the *gold* and the *note*, there was none of his ever having the *pocket-book* in his possession. The note and the money were decided not to be such goods and chattels as the statutes against receivers had in contemplation; and as the pocket-book was not traced into his possession, he was acquitted.‡

And the indictment against the receiver need not negatively aver that the principal has not been convicted.§ When it appeared that the prosecutor was in company for two days with a person who professed himself to be the

* 1 Hale, 620.

† West's case, O. B. 1784.

‡ O. B. 1779.—R. v. Guy, O. B. 1782.—Leach, 266; and R. v. Morris, Id. 525.

§ R. v. Baxter, Leach, 660.—5 T. R. 83.

principal felon, but was not taken by such prosecutor for such felony; it was held, that the receiver of the goods might be prosecuted.* And even the principal would be a good witness against the receiver, under 22 Geo. 3.† And by the same statute, a receiver may be prosecuted, though the principal has been convicted, provided such principal was guilty of petty larceny only.‡ A receiver indicted after the conviction of the principal, may controvert the guilt of the principal, because he may shew that he received the goods in such a manner, as to make the conversion of them a breach of trust only, and not a felony.§

And a receiver who is employed by the principal to deposit goods in a place not such receiver's own property, but that of a third person, whatever interest he may have in the stolen goods, may not be a receiver, according to the contemplation of the statutes, but amenable as a principal in the felony, or not at all criminally. ||

TRIAL OF PRISONERS.—When the grand jury have agreed Trials upon any bills, whether for misdemeanours, or felonies, they bring, at least, some of them into court, that there may be no interruption in proceeding with the business of the session.

So much has already been advanced respecting misdemeanours, in considering the subject of traverses, that, till we come to consider the indictments themselves, on which this description of offences is brought before the court, little more need be added which is *peculiar to them*; ex- Misdemeanours. cept that in the case of prosecutions for assaults, which description of indictment comprehends, in general, much the most numerous class of offences brought before courts of session of the peace, it is not unusual for the prosecutor and defendant to agree the matter *before the defendant pleads* Pleading guilty, by agreement with the Prosecutor. *to the indictment*, and then the defendant comes into court in his proper person, and pleads guilty to the indictment; and upon the prosecutor's acknowledgment in person, or the

* R. v. Wilkes, Leach, 121.

† Haslem's case, O. B. 1786.

‡ R. v. Baxter, 5 T. R. 83.

§ R. v. Smith, Leach, 323.

|| R. v. Rogers & Brace, O. B. 1817.—3 Dick. Pract. Expos.

defendant proving (by a subscribing witness) or an affidavit made and filed, a general release executed by the prosecutor, the defendant submits to a small fine, (to wit) such as the court is pleased to impose for the offence against the public peace.

Compromise
by consent of
the court.

And as this mode of terminating a prosecution (wherein the injury inflicted on an individual most exceeds that which is supposed, in the particular case, to be done to the public by the breach of the peace) is, as has been observed, effected by a compromise between the parties previous to trial; so it is not unfrequently brought about by the recommendation of the court in different stages of the proceedings; and is, indeed, very frequently produced *in effect* even after conviction; for it is the common practice in Middlesex, even after judgment and fine set, to allow the defendant to make a private agreement with the prosecutor, by an instruction from the court, that *the defendant may speak to him*; whereby it is understood, that a remission of the fine to the king is to take place, and a portion of it is to be paid to the prosecutor, as a recompence for the injury received by him.

But Sir William Blackstone very strongly reprobates this practice of permitting the defendant to *speak with the prosecutor*, as it is termed; for, he observes, that "it is a dangerous practice; and that though it may be entrusted to the prudence and discretion of the judges in the superior courts of record, *it ought never to be allowed in local or inferior jurisdictions, such as the quarter sessions*, where prosecutions for assaults are by this means too frequently commenced, rather for private lucre, than for the great end of public justice. *Above all, it should never be suffered where the testimony of the prosecutor himself is necessary to convict the defendant*; for by this means the rules of evidence are entirely subverted, the prosecutor becomes, in effect, a plaintiff, and yet is suffered to bear witness for himself; nay even a voluntary forgiveness by the party injured ought not in true policy to intercept the stroke of justice."*

* 4 Black. Com. 363. Every man who has any experience as a

Upon a bill for felony being returned by the grand jury, the clerk of the peace calls every juryman by his name, who severally answer, to signify they are present; and the foreman of the jury hands the indictments to the clerk of the peace, who thereupon says to the jury thus: "Gentlemen, you agree the court shall amend matter of form, altering no matter of substance?" The jury signifying their consent, the clerk of the peace reads the names of the offenders, and offences, of every indictment, whether the bills are found to be true, or not (as endorsed by the jury); and on those bills indorsed "*not found*," or "*no true bill*," the clerk of the peace makes his private mark, signifying as much.

Return of
bills by the
grand jury.

The gaoler being called to set his Prisoners to the bar, and the crier being called to *make a bar*, that is, to dispose of the company, that a way may be made open from the court to the Prisoners, and that the court, jury, and Prisoners may see each other, one of the Prisoners is called to:—"A. B. *hold up your hand*."*

Though this holding up of the hand may seem a trifling circumstance, yet it is of this importance, that thereby he admits himself to be the person indicted.

However, the ceremony of holding up the hand is not required in the case of a peer, nor is it of absolute necessity in the case of a common person.†

For being calculated merely for the purpose of identifying the person, any other acknowledgment will answer the purpose as well; therefore if the Prisoner obstinately and

justice of the peace, must concur with the judge, in his suggestion respecting the motives, which too often influence prosecutions for assault; but it may fairly be asserted, that such motives do not prevail more in prosecutions at the sessions before justices, than at the assizes before judges, although the rank and situation of the parties prosecuting at one or the other, may somewhat differ: and it may not unreasonably be admitted, that the justices of the peace, being better acquainted with the characters of the parties living in their immediate neighbourhood, than the judges of assize can be, who are mostly strangers to the country, are therefore at least as adequate to determine in what instances a practice generally censurable, may be occasionally beneficial.

* Dalt. c. 125.

† 2 Hale, 219.

contemptuously refuse to hold up his hand, but confess he is the person named, it is sufficient.*

Arraignment.

And this is called the *arraignment* of the Prisoner; and to arraign, is nothing else, but to call the Prisoner to the bar of the court to answer the matter charged upon him in the indictment. †

The Prisoner is to be called to the bar by his name; and it is laid down in Bracton, that, though it be upon an indictment of the highest nature, he must be brought to the bar without irons, or any manner of shackles or bonds; unless there be *evident* danger of an escape, in which case alone he may be secured with irons; but Prisoners now usually come with their shackles upon their legs, for fear of an escape, but stand at the bar otherwise unbound until they receive judgment. ‡

The arraignment of a Prisoner therefore consists of these parts:

1st. The calling the Prisoner to the bar; as has been stated.

2dly. Reading the indictment distinctly to him in English, that he may fully understand his charge.

3dly. Demanding of him whether he be guilty, or not guilty; § in the following manner: "*You A. B. stand indicted by the name of A. B. for that you, &c.*" so read the indictment through, and then ask the Prisoner, "*How say you, A. B. are you guilty, or not guilty?*"

Reply of defendant.

If he answer that he is guilty, then the confession is recorded, and no more done till judgment; || except indeed, that witnesses are frequently examined in cases where the punishment is in any respect discretionary, in order to ascertain the degree, or quality, of the offence, before the sentence is pronounced, that one may be proportioned to the other.

If he make no answer at all, and will not plead, he shall have the same judgment as if he had confessed the indictment.**

But if he say *not guilty*, he is then asked, "*how will you be tried?*" to which the common answer is, "*By God and*

* 4 Black. Com. 325.

† 2 Hale, 216.

‡ Ibid.—4 Black Com. 322.

§ Ibid.

|| Dalt. 185.

** 12 Geo. 3. c. 20.

the country:" then the clerk says, "*God send you a good deliverance;*" and writes over the Prisoner's name on the indictment, *po. se*; that is, *ponit se*, puts himself upon God and the country,* or other words to that effect.

But if the Prisoner have any matter to plead, either in abatement, or in the bar of the indictment, as misnomer, a former acquittal, former conviction, a pardon, or other matter, he pleads it without immediately answering to the felony. †

Here then we must pause awhile, in the proceedings of the Court, in order to consider the indictment itself, and its component parts: and although an outline of the law on this momentous and intricate portion of the proceedings is all that comes within the compass of a mere manual of this description, the items must be necessarily numerous.

Two subjects relative to indictments first present themselves, viz. the CAPTION of the indictment, and the BILL itself. For the caption is no part of the bill, but it is the style or preamble; and every such caption is erroneous which does not set forth with proper certainty, both the court in which, and the jurors by whom, and also the time and place at which, the indictment was found. The record of the indictment as it stands upon the file of the court where it is taken is short, only thus:—"The jurors of our Lord the King upon their oath present, &c." but when the record is removed from the inferior court by *certiorari*, to a superior one, the caption must be prefixed, and must be full and explicit, and contain all these particulars. ‡

The Indictment.

Caption.

County of. . . } Be it remembered that at the General Quarter Session § of the Peace of our Lord the King, Form of the
(to wit.) } bolden at the (hall, or castle, or session's house, or as the fact may be) at for the county of aforesaid, the }
day of in the year of the reign of, &c. before

Caption.

* 2 Hale, 119. † 2 Hale, 219. ‡ 1 Hawk. c. 25.—2 Hale, 165.

§ If an indictment be found at an adjourned session, the particulars must appear on the caption, as when the session began, before whom bolden, &c.—R. v. Fisher, et al. 2 Str. 865.

¶ If an impossible day be inserted, the proceedings will be held insufficient, on demurrer, 1 T. R. 316.

A. B., C. D., E. F., Esquires, and G. H. Clerk, and others their companions, Justices of our Lord the King, assigned to keep the peace of our said Lord the King in and for the county aforesaid, and also to hear and determine divers felonies, trespasses, and other misdemeanours committed in the said county, by the oath of P. Q., S. T., &c. (*naming the jurors*) twelve jurors, good and lawful men of the said county of then and there empannelled, sworn, and charged to enquire for our said Lord the King and the body of the said county, it is presented as followeth, that is to say, &c. &c.

Requisites in
an indictment.

As to the INDICTMENT itself;—the requisite, and most considerable, parts of it are, 1st, the name, and addition, of the party offending; 2d, the day and year of the offence committed; 3d, the place where it was committed; 4th, upon, or against, whom committed; 5th, the manner of the commission of it; 6th, the fact itself, and the nature of it; 7th, the conclusion.

In Lord Hale's description of an indictment, viz. that "it is a plain, brief, and certain narrative of an offence committed by any person, and of the necessary circumstances that concur to ascertain the fact and its nature," we recognize all the foregoing particular requisites. Before we come, however, to give them a more ample consideration *individually*, a few *general* observations on the structure of indictments may not be either misplaced, or irrelevant. Certainty may be termed the polar star of all legal proceedings, but it is eminently so of all criminal cases; for without it no man would know against what accusation he had to defend himself. For this reason, as every kind of crime stands on its own particular circumstances, there must of course be a peculiar rule observed, and a particular technical language to a certain degree used in describing it. This observation is correct even when applied to common law indictments for crimes, the legal descriptions of which are of somewhat a more *generic* kind; but for those numerous *species* of offences created, or declared, by *statutes*, certainty to a greater degree of minuteness in the description of the specific offence at least, but generally also respecting *the mode* in which it has been perpetrated, or other concomitant circumstances, is required: as *ex. gr.* in an indictment for obtaining money by false tokens, or

goods under false pretences, upon the statutes, it must not merely state the offence generally in conformity with the description of it in the statutes, but must set out the false tokens or pretences themselves, on the face of the record, by means of which the offence was perpetrated.*

It may be necessary however in the general view now taking of the subject, to observe, that, though there must be a description sufficiently ample to comprehend the offence with certainty, superfluous and immaterial averments, if what remains after taking them away be sufficient, will not vitiate the record altogether, but may on arrest of judgment be rejected as surplusage. †

Although, however, every indictment must contain a complete history of such circumstances as constitute the crime, without inconsistency or repugnancy; yet, except in certain cases where technical expressions, having by long use grown into law, are required to be used, the same sense is to be put on the words of an indictment which they bear in ordinary acceptation; and if the sense of any word be ambiguous according to that rule of interpretation, it must be construed according to the context and subject matter, in order to make the whole consistent and intelligible. Thus the word *until*, may be taken to be *in-clusive* or *ex-clusive*, of the day to which it is applied, according to the context and subject matter. ‡

1st. Then the name of the party indicted regularly ought to be inserted, and inserted truly, in every indictment. But if a mistake be made in it, and the defendant appear to it and plead not guilty, he cannot afterwards take advantage of the error. §

But an indictment that the King's highway in such a place is in decay through the fault of *the inhabitants* of such a town, is good without naming any particular persons. ¶ So for keeping a disorderly house, the evidence of

* 1 Leach, 487. R. v. Holland, 5 T. R. 607. and *post* *Precedents*.

† R. v. Morris, 1 Leach, 127. and *post* *Precedents*.

‡ R. v. Stevens et al. 5 E. R. 244. § 2 Hale, 174.

¶ 2 Hawk. c. 25.—Jonson v. Stewart, 1 T. R. 748.

which is, that disorderly persons frequent it, whose views probably cannot precisely be ascertained.*

Additions.

Also, "in all indictments on which process of outlawry lies, to the names of the defendants *additions* shall be made of their estate, or degree, or mystery, and of the town or hamlets, or places, and counties where they were, or be, conversant." †

If the christian name be *wholly* mistaken, this is regularly fatal to all proceedings: but otherwise if only the *manner* of spelling be incorrect.

Mistaken names.

But a person cannot take advantage of a *mistaken surname* in an indictment, either by plea in abatement or otherwise, notwithstanding such surname have no affinity with his true one; ‡ at least so great authorities have laid down the law; but it has been lately questioned. §

However, every other misnomer of the defendant, except that of the surname, is decidedly fatal; for a misnomer of the defendant's name of baptism may be pleaded in abatement of an indictment. || But a defendant to an indictment for a misdemeanour, cannot plead over to the charge, after a plea in abatement for a misnomer, on which issue is taken and found against him. **

Mistaken titles.

And it is necessary also to give every person his proper *addition* or *title*, and it is fatal if it be not done. If a man have several titles, he must be described by the most honourable; and if he have none by birth, office, creation or reputation, and he be described by any such; or where a *gentlewoman* is named merely *spinster*, or a *yeoman* is named *gentleman*, and in all such like cases, if such matter be pleaded in abatement, and found for the person who pleads it, the writ shall abate. ††

But a trader may be sued either by his degree or rank

* 10 E. R. 83.—E. P. C. 651. Str. 497.

† 1 Hen. 5. c. 5.

§ 10 E. R. 83.

** R. v. Gibson, 8 E. R. 107.

‡ 2 Hawk. c. 25.

|| 2 Hawk. c. 25.

†† 2 Inst. 699.

in society, independent of his trade, or by the name of his vocation.*

Gentleman, or esquire, are either of them good additions for the estate and degree of a man, Proper titles of men and women. gentlewoman for that of a woman. Labourer is also a good addition for the estate and degree of a man, but not for that of a woman; and widow, single woman, wife of J. S. spinster, are good additions of the estate and degree of a woman; but burgess, and citizen, and servant, are all of them too general, Additions which are too general. and therefore not good additions of the state or degree either of a man, or woman. †

And if several defendants, of different names, have the same addition, it is safest to repeat the addition after each name, applying it particularly to every one of them; and where a father hath the same name, and the same addition, with a defendant, being his son, a writ is abateable, unless it add the addition of *the younger* to the other additions; but where the father is alone the defendant, it is said that there is no need of the addition of *the elder*. And if the son be in the custody of the marshal, and so declared against, it is said that the count is good without the addition of *the younger*, unless the father of the same name and addition be also in the custody of the marshal. ‡

It is a fatal fault to apply such additions to the name which comes under the *alias dictus* only, and not to the first name: but it is said not to be material whether any addition be put to the name which comes under *alias dictus*, or not; because what is so expressed is not material. §

The additions of the estate, *degree* and *mystery* of the party, are not sufficient, unless they be the same which he had at the time of the writ; and in this respect such additions differ from that of place, which is sufficiently shown by naming the defendant *late of* such a place. Mystery at the time of writ.

Also such addition must be expressed in such manner, that it may plainly appear to refer to the party; and therefore it is not well expressed by the addition of his mystery,

* 2 Lord Raym. 1542. † 2 Hawk. 23.

‡ 2 Hawk. 23.

§ Stuart. R. C. 68.—1 Leach. 355.

naming him son of A. of B. butcher, because butcher refers to A. rather than to the son.*

Meaning of
mystery.

The word *mystery* includes all lawful arts, trades, and occupations; and if one, under the degree of a gentleman, have divers of such arts, trades, or occupations, he may be named by any of them.†

Farmer, what.

But the addition of farmer, seems to be an insufficient addition, because if any mystery be implied to the notion of it, it is that of husbandry, of which *husbandman* is the proper addition.

Residence.

With respect to place of residence, it is a good addition of this kind to name the party *late of such a parish*,‡ in which respect this addition differs from that of the *estate, degree, or mystery*; and it is said that if a defendant be named of A. and late of B. it is sufficient to prove either addition.§ But in an indictment for an assault, defendant was described as late of A. in the county of B. without stating that A. was a parish; it was holden bad; although the offence was laid to have been committed at the *parish aforesaid*; for some certain venue must appear on the face of the record, and here the offence is laid *at the parish aforesaid*, and no parish is mentioned. ||

Several persons indicted
for one offence.

If several persons be indicted for an offence, misnomer or want of addition of one, quasheth the indictment only against him, and the rest shall be put to answer, for they are in law as several indictments.** Although a contrary doctrine hath been advanced.††

Defendant not
obliged to take
advantage of
misnomer.

A person, though his name be mistaken, is not *obliged* to take advantage of it; and therefore if a person be indicted and acquitted of a crime, and afterwards he be indicted for the same offence, in which second indictment the crime is described to be the same in substance, with some variation of the name or addition, &c. he may make good the variance, by averring that he was the same person meant in both.‡‡

* 2 Inst. 670.—2 Hale 177.

† 2 Inst. 668.

‡ R. v. Yandell, 4 T. R. 541.

§ Str. 924.

|| R. v. Mathews, 2 Leach, 664.—5 T. R. 162.

** 2 Hale, 177. †† 2 Hawk. c. 23. ‡‡ 2 Hawk. c. 23.

As in the name, so the addition of the party indicted, ought to be inserted, and inserted truly; yet, if the party be indicted by a wrong addition, and he plead to that indictment *not guilty*, or answer to that indictment upon his arraignment, he shall not be received after to plead falsity of his addition, for he is concluded, and estopped by his plea by that addition.*

Must make his election before he pleads.

Therefore he that will take advantage of the misnomer of his name, or addition, must do it upon his arraignment, and the entry must be special.

And do it upon his arraignment.

After all, there is little advantage accruing to the Prisoner, by means of these dilatory pleas; because if the exception be allowed, a new bill of indictment may be framed, according to what the Prisoner in his plea avers to be his true name and addition. For it is a rule, upon all pleas of abatement, that he who takes advantage of a flaw, must at the same time show how it may be amended.

What advantage it is to a defendant.

Therefore the safest way, in criminal cases, is to allow the party's plea of misnomer, for he that pleads misnomer, must in the plea set forth what his true name is, and then he concludes himself; and if the Grand Jury be not discharged, the indictment may presently be amended, and returned according to the name he gives himself. †

The statute of additions, however, and what has gone before on this subject, refer only to the defendant, and do not affect the prosecutor, or any other parties mentioned in the indictment; and therefore with respect to these no addition can be necessary, unless such distinction become so in order to render it intelligible to the party accused, who are his accusers. ‡ Still however, wherever the offence consist of acts done by the defendant, connected with divers other persons, those persons must be sufficiently described not to admit of uncertainty. § Some cases indeed form exceptions to this rule, as has already been observed, but these arise from necessity, viz. that they are in

Name and addition of third person.

* 8 E. R. 107.

† 2 Leach, 861.

‡ 2 Hale, 175.—4 Black. Com. 335.

§ 2 Hawk. c. 25.

all probability altogether unknown, in which case they are so described.*

Time of the
offence.

2. As to the day and year of the offence committed. This is necessary to be contained in the indictment. For it is laid down as an undoubted principle, in all the books that treat of this matter, that no indictment whatsoever can be good without precisely showing a certain *year* and *day* of the material facts alleged in it. But if an indictment lay the offence on an uncertain, or impossible, day, as where it lays it on a future day, or lays one and the same offence at different days, or lays it on such a day which makes the indictment repugnant to itself, it is void; and it hath been adjudged, that no defect of this kind can be helped by the verdict. †

The *hour* was seldom necessary to be laid in the indictments at courts of session of the peace, as, except burglary, few offences took their completion from the *hour* at which they were committed; but now by some recent statutes (as one for the protection of game, ‡ and a few others,) the hour becomes a necessary ingredient to bring some very common offences within the statutes, in order to show that they were committed between the limits affixed, on which depends the nature of the offences.

Offences com-
mitted in the
night.

If the offence be committed on the night before midnight, it must be laid in the indictment as of the day before; and if after midnight, as of the day after. Except, at least, in such cases as that last adverted to, wherein it becomes necessary to lay the offence as having been committed *after a certain hour* of one day, and *before a certain hour* of the succeeding day; for that is the essence of the offence.

Set forth under
a *scilicet*.

In setting forth the time when the facts occurred, it is usual to do it under a *scilicet*, or *to wit*, and so far as reducing what before was stated generally or ambiguously to precision, it is not only allowable, but useful; but it must

* 2 East, P. C. 651.—2 Hale, 181.

† 2 Hawk. c. 25.—R. v. Haynes, 4 M. & S. 214.

‡ 57 Geo. 3. c. 90.

not be repugnant to the premises; must neither increase, nor diminish them; but must be merely explanatory.* When the precise time is material, and enters into the substance of the description of the offence, though laid under *scilicet*, it is conclusive and traversable, and must be intended to be the true time, and if repugnant to the premises will vitiate.†

In indictments for assaults there need not be a repetition of the time, or even a reference to it, as the time first laid will be connected with all the subsequent facts. But in indictments for felony it is otherwise, and especially where the crime consists of a continuation of facts.‡

In short every *material* fact which is issuable and triable, must be laid with time and place.§

Where an indictment, however, charge a man with a bare omission, such as not scouring a ditch, or repairing a certain piece of road, which he may be bound to do by tenure, or prescription, time is not necessary to be stated, because it is a *present* evil which is complained of.||

3. As to the place *where* the offence was committed. The venue is a necessary ingredient in the indictment for the trial of any offence. At common law the venue should be laid in the county where the offence is committed, although the charge may in its nature be of a transitory kind, as seditious words; and it does not lie on the prisoner to disprove the offence in the county where laid, but it is expected for the prosecutor to prove that it was committed within it. In former times it was thought right that every offence ought to be tried in the neighbourhood where committed; in modern ones a different notion prevails, viz. that there is the best prospect of impartiality among strangers; whence many provisions by statute.** However, it would lead us into much too wide a field of inquiry here to pursue this subject to any great length. It is sufficient, for all the pur-

* 5 E. R. 252.

† Black. R. 495.

‡ 2 Hale, 178.

§ 5 Term R. 620.

|| 2 Hawk. c. 25. and *post* *Precedents*.

** 38 Geo. 3. c. 52.—51 Geo. 3. c. 100.—53 Geo. 3. c. 108. and others.

poses of a session of the peace to observe, that where a statute has made an offence cognizable by trial in any other county or place than that where it was committed, it is sufficient to show that the offence comes within the description so provided for; and as to those offences which are not the subject of any such special provision, the old common law rule applies, viz. that in general the venue must be laid in the county where the offence is alleged to have occurred. But it sometimes happens that an offence is inchoate in one county, and completed in another. In such cases, as where, *ex. gr.* a person writ a letter containing indictable matter in one county and put it into the post-office there, to be conveyed as addressed to a person in another county, the offender may be indicted in either.* So if a nuisance commence or be committed, in one county, and it extend into, or affect, the public in another, the offender may be indicted in either.† If facts, however, be laid as to the place, with repugnancy or uncertainty, the indictment will be bad, and even a verdict would not cure the defect; as if, for instance, two or more places are mentioned in the record, and the offence is laid to have been *then and there* committed, it is uncertain to which of the places mentioned the *then and there* refers.‡ But though a place where the offence occurred must be laid in the indictment, it is sufficient if it be proved in evidence to have happened within the county, i. e. within the jurisdiction of the court; except, indeed, those particular instances wherein the place is of the essence of the crime, as is frequently the case with many sorts of *nuisances*.

Persons against
whom com-
mitted.

4. As to the *person against whom* the offence was committed, it is sufficient to observe that, *if he be known*, his name ought to be inserted; insomuch that, although it has been heretofore observed that a felony may be committed of the goods of a *person unknown*, yet if it appear that the person be actually known, an indictment so worded

* 1 Leach. 142.—2 East. P. C. 1120.

† 2 Hawk. c. 25.—2 B. & P. 981.—1 Taunt. 379.

‡ 2 Hale, 180.—Loft. 129.—4 P. R. 490.

will be bad, and the Prisoner must be discharged of it, and a new one should be preferred.* Even an indictment against an accessory stating the principal to be unknown, if contrary to the truth, and that truth appear, will be bad.

There are, however, some few exceptions to the general rule; as *ex. gr.* in the offence of sacrilege, or of lead stolen from a church within the statute 4 Geo. 2. it is not necessary to state the property as belonging to any person by name. The determinations which now constitute the law on this point are of modern date, † and probably have been occasioned by the difficulty of ascertaining in whom the property resided. In some cathedral churches, it is supposed that the property of the church, and of its whole furniture and goods, is in the canons; in others where it is partly cathedral or collegiate and partly parochial, that they are the joint property of the canons and the parishioners; in old erected parish churches that they belong to the parishioners; in those of more modern erection in certain trustees, &c. &c. ‡

Another exception has been holden in the case of stealing the shroud, &c. from a dead body, wherein it is said to be sufficient to charge the offence to have been committed against the executors generally, without naming them specifically. §

5. *The manner of the commission.* An indictment being Manner of
commission. merely a plain, and certain, narrative of an offence committed by any person, and of those necessary circumstances that concur to ascertain the fact, and its nature, in which, in favour of life, great strictnesses have at all times been required, it is therefore laid down as a good general rule, that in indictments the *special manner* of the whole fact ought to be set forth with a scrupulous certainty, that it may judicially appear to the court that the indicters have not gone upon insufficient premises. ||

Hence, it hath been holden, that no periphrasis or cir-

* 2 East. P. C. 651.—3 Camp. 265.

† 1 Leach. 318.—2 East. P. C. 593.

‡ R. v. Isley, 1 Leach, 360. & *post* *Precedents*, title *Larceny*.

§ 3 Inst. 110.—2 Hale, 181.—4 Black. Com. 235.

|| Cald. Ca. 187.

cumlocation whatsoever, will supply those words of art which the law has appropriated for the description of the offence; as *burglariously* in an indictment of burglary; *feloniously* in an indictment of felony, and the like.

Also an indictment charging a man disjunctively is void; as that he beat, *or* caused to be beaten; for here are distinct offences, requiring to be very differently charged, and it appears not of which of them the indicters have accused him.*

Accusation in
general terms.

Also an indictment accusing a man in general terms, without ascertaining the particular offence laid to his charge, is generally insufficient; for no one can know what defence to make to a charge which is uncertain, nor can plead it in bar or abatement of a subsequent prosecution. But "common barreter and disturber of the peace of our Lord the King," &c. is good; only because barrettry is an offence known to consist of a succession of acts, in which repetition, or manner of committing, consists the offence.†

Also an indictment against one for being a common scold is good without setting forth the particulars, ‡ and that for the same reason. So of the keeper of a bawdy-house, the offence not consisting of one act, but in the general manners and habits of the house. §

In the case of a scold it is not necessary to prove the particular expressions used, but sufficient to prove generally, that she is always (as the report says) scolding. But though the indictment be good in a general form with these words, yet it has always been held that the prosecutor must give the defendant notice before the trial of some particular instances of the offences that are meant to be proved. ¶ By which even the excepted case is brought as near as possible to the general rule.

Upon this principle it has already been noticed, that in an indictment for obtaining money or goods upon false pretences, it is not sufficient to state generally the fact, but also the *manner* of its having been committed must be stated, as

* 2 Hawk. c. 25.

† 2 T. R. 586.—4 T. R. 754.

‡ 2 Hawk. c. 25.

§ Burr. R. 1233.

¶ 4 T. R. 754.

what the pretences were, and what part of them are, to be insisted on as false, that the defendant may know to what precise accusation he has to answer.*

As in indictments for murder the instrument which caused the death must be stated, and the *manner* in which such death occurred; so in crimes of inferior turpitude the same rule of precision, with respect to the manner of committing the offence, holds.

An indictment against a man for that "he feloniously In larceny. took and carried away goods and chattels of another," without showing what is certain, as *one horse, one ox, or the like*, is not good.

Also the number of things stolen must be expressed in the indictment; for it is not sufficient to say *feloniously did steal sheep*, without expressing their number. Number of things stolen.

And the value of any thing stolen must also be set down in the indictment, that it may appear whether it be *grand* or *petit* larceny.† Value of ditto.

Figures to express numbers are not allowable in indictments, but numbers must be expressed in words; except where any instrument is to be set out in an indictment, for in that part the transcript must be an exact copy.‡ Figures not admissible.

6. The *fact itself, and the nature of it*, must be set out precisely, positively, and substantively, and not by way of recital, as with a *whereas*: and it must expressly allege every thing material in the description of the substance, nature, and manner of the crime, for no intendment shall be admitted to supply a defect of this kind. Thus, murder must be laid to be committed *with malice aforethought*, for without that allegation, it is not murder; robbery must be stated to be done *feloniously*; housebreaking in the night, *burglariously, &c.* Facts not to be stated by way of recital.

Also an indictment, grounded upon an offence made by act of parliament, must, *by express words*, bring the offences within the substantial description thereof; and those circumstances mentioned in the statute to make up the offence Offences by statute.

* 2 M. & S. 379.

† Hale, 182.—Lamb. 497.

‡ 2 Hale, 170.

shall not be supplied by the general conclusion, *against the form of the statute*. And so it is, where an act of parliament ousts clergy in certain cases; for though the offences themselves were all at common law, yet as they were at common law within clergy, the parties, if convicted, shall not be ousted of clergy unless these circumstances, as, *of malice aforethought, or in or near a highway, &c.* be expressed in the indictment.*

But there is no necessity in any indictment on a public statute to recite such statute, for the judges are bound, *ex officio*, to take notice of all public statutes.

Wrong recital
of a statute.

Yet, if the prosecutor take upon him to do it, and materially vary from a substantial part of the purview of the statute, and conclude *against the form of the statute*, he vitiates the indictment.

But no advantage can be taken of a variance from any part of a *private* statute, without showing it to the court in a proper manner; because otherwise such statute shall be taken to be as it is recited.†

Conclusion.

7. *As to the conclusion.* Regularly every indictment ought to conclude, *against the peace of our Lord the King, his crown, and dignity*, and therefore an indictment without such conclusion is insufficient, though it be but for using a trade, not being an apprentice; for every offence against a statute is *contra pacem*, and ought so to be laid.

And if a man be indicted for an offence supposed to be committed in the time of a former king, and it conclude, *against the peace of our Lord the King that now is*, it is insufficient; for it must be supposed to be done against the peace of that king in whose time it was committed.

But if an offence be supposed to be commenced in the time of one king, and continued in the time of his successor (as *ex. gr.* a nuisance), it must conclude, *against the peace of the king generally*, or it will be insufficient. ‡

Offences at
common law
which are also
offences by
statute.

It was formerly holden, that no indictment grounded on a statute, and concluding against the form of the statute,

* 2 Hale, 170.

† 2 Hawk. c. 25.

‡ 2 Hale, 189.—3 Burr. R. 1903.

could be maintained as an indictment at common law, if it were not maintainable as an indictment on some statute, because it appears that the prosecution is grounded on a foundation which will not support it: but the law is now taken to be otherwise; and accordingly it hath been adjudged, that on a special indictment on the statute of stabbing, the defendant may be found guilty of general manslaughter at common law, and the words "*against the form of the statute,*" rejected as senseless.

But it is agreed, that a judgment on a statute shall never be given on an indictment which doth not conclude "*against the form of the statute;*" and therefore if the fact indicted be an offence prohibited by statute *only*, and the indictment conclude not "*against the form of the statute,*" no judgment can be given upon it; for though an indictment, which is redundant, may be helped by rejecting what is senseless, an indictment that is defective in a material part, can be no way supplied.*

Having thus gone briefly through the component parts of an indictment, so far as to give inexperienced persons some general notion of its construction, it is only necessary further to observe, that although the offences of several persons cannot but be several, because one man's offence cannot be another's, but every man must answer for himself; yet if it *wholly* arise from a *joint* act which is in itself criminal, as where several join in keeping a gaming-house, or in deer-stealing, or maintenance, extortion, or the like, the defendants may be indicted jointly, and severally, as that they, and each of them, did so and so, or jointly only; for it sufficiently appears, that if all are joined in such act, each must be guilty; and therefore some of them may be convicted, and some acquitted.

But where the offences arise from a joint act which in itself is not criminal, but may be so by reason of some personal defect peculiar to each defendant, as where divers followed a joint trade, for which the law till lately required a seven years' apprenticeship, in which case each trader's par-

Every man
must answer
for his own
offence.

Joint acts.

* 2 Hawk. c. 25.

ticular defect, and not the joint act, made him guilty, it was most proper to indict them severally, and not jointly, because each man's offence was grounded on a defect peculiar to himself.

And for this reason indictments have been quashed for jointly charging several defendants for not repairing the streets before their houses, or for neglecting a day of fasting appointed by proclamation; and this is agreeable to the rule of law as to bringing actions on penal statutes, wherein several defendants shall not be joined, except it be in respect of some one thing in which all are jointly concerned.*

After this general explanation, it is time to return to the proceedings on the trial, reserving the specimens of the actual construction of indictments to the conclusion of the chapter, where some on most of the ordinary occasions, as well in misdemeanours as felonies, with such explanations of the law, and observations on the practice, as naturally arise out of them, in notes subjoined to them respectively, will be found. It may, however, be right to add here, that no precedents will be admitted but such as have received the sanction of high authority.

We now return, then, to the proceedings on the trial.

Witnesses
called.

The prisoner having put himself upon his country, the prosecutors and witnesses are next called on their recognizances, and they take the place assigned to them by the court.

Jury called.

Then, the petty jury are called on their panel by the clerk of the peace in this manner: "You good men that are returned and impanelled to try the issue joined between our Sovereign Lord the King and the prisoner at the bar, answer to your names, upon pain and peril that shall fall thereon;" which done, and a full jury appearing, the clerk of the peace calls the prisoner to the bar, and says to him, "These good men that were last called and have appeared, are those which are to pass between our Sovereign Lord the King and you (upon your several lives and deaths, would be added if it be a capital offence); if, therefore, you will chal-

* 2 Hawk. c. 25.

lenge them, or any of them, your time is to speak, as they come to the book *before they are sworn*, and you shall be heard."* Then proclamation is made by the crier of the court to the following effect: "If any can inform the King's attorney or this court of any treasons, murders, felonies, or other misdemeanours against A. B. the prisoner at the bar, let them come forth, for the prisoner stands upon his deliverance."†

Challenges are of two kinds, viz. either to the *array*, or Challenges. to the *polls*; and may be made either on the part of the King (i. e. the prosecutor), or the prisoner.‡

Challenges to the *array* are at once an exception to the To the array. whole panel, in which the jury are *arrayed*, or set in order, by the sheriff in his return.

And this kind of challenge is two-fold, either a *principal cause* of challenge, or to the *favour*.

A *principal cause* of challenge is grounded on such a manifest presumption of partiality, that, if it be found true, it unquestionably sets aside the array, or the juror.

And these are the *principal causes* of challenge to the array, viz. if the sheriff or other officer concerned in summoning the jury be a party to the suit, or immediately interested in it, or be of kindred or affinity to the plaintiff or defendant, if the affinity continue; if the officer return any juror on the nomination of either party, the whole array shall be quashed. If the plaintiff or defendant have an action of battery against the sheriff, or the sheriff against either party, this is a good cause of challenge. So if the plaintiff or defendant have an action of debt against the sheriff; so if the sheriff or his bailiff which returned the jury be under the distress of either party;—or if the sheriff or his bailiff be either of counsel, attorney, officer, or servant of either party, or arbitrator in the same matter, the array may be well challenged. §

As to a challenge to the array *for favour*, it being no To the favour. principal challenge, must be left to the conscience and discretion of the triers; as if either of the parties be tenant to

* 2 Hawk. c. 25.

† Dalt. c. 185.

‡ 4 Black. Com. 352.

§ Co. Lit. 156.

the sheriff, or if the sheriff have an action of debt against either of the parties, these are causes of challenge to the favour only; for the sheriff thereby is not under the party's influence, but the party under his.* It is said that the subject cannot take a challenge for favour against the King, without showing some actual partiality in the sheriff or juror, or some particular cause in respect whereof the King may influence them.†

Challenges to *the array* are now, however, so unfrequent, that we pass on to consider challenges to the *polls*.

To the Polls. A challenge to the *polls*, is a challenge to the particular jurors, and these challenges also are two-fold; either *peremptory*, or for *cause shewn*.

Peremptory. A *peremptory* challenge is so called, because a person may challenge *peremptorily* upon his own mere dislike, without shewing any cause.‡

The numbers that might be challenged *peremptorily* have been varied at different periods, by divers statutes, § according to the nature of the offence; but now the privilege stands thus:—In treason of every description the prisoner may challenge thirty and five peremptorily, but in other felonies only twenty. || The King, however, shall not be allowed a *peremptory* challenge.**

For cause. A challenge to the polls, for *cause shewn*, is either principal, or to the favour.

And the principal challenge is reduced to four heads, *propter honoris respectum*; *propter defectum*; *propter affectum*; and *propter delictum*.

Respectum. 1. *Propter honoris respectum*, or in respect to the rank and dignity of the juror; as if a lord of parliament be impanelled on a jury, he may be challenged by either party, or he may challenge himself.

Defectum. 2. *Propter defectum*, or for a defect; as if a juryman be an alien born, this is defect of birth.

* 3 Black. Com. 359. † 2 Hawk. c. 43. ‡ Co. Lit. 156.

§ 22 Hen. 8. c. 14.—32 Hen. 8. c. 3—33 Hen. 8. c. 23.—1 & Ph. & Mar. c. 10.

|| 4 Black. Com. 354.

** 33 Edw. 1. st. 4.

So, if the juror be within the age of twenty-one, it is a good cause of challenge,* and is *defect of age*; or that he hath not sufficient estate, this is *defect of estate*.†

3. Propter *affectum*, or for suspicion of bias, or partiality, *Affectum*. Therefore if the juror be of the blood or kindred to the party in the prosecution; or under his power or direct influence, as tenant, or servant, or of council with him.‡ So, if he has declared his opinion beforehand respecting the guilt of the prisoner.§

And an exception against a juror, that he hath found an indictment against the party for the same cause, hath been adjudged good; and also upon another indictment when the same matter is in question, or happen to be material, though not directly in issue. But it is no good cause of challenge that the juror hath found *others* guilty on the same indictment; for the charge is several against each.||

It is also a good cause of challenge on the part of a prisoner, that the juror has a claim to the forfeiture which would ensue from the party's attainder or conviction.** Lord Coke says, "If either party labour the juror, and give him any thing to give his verdict, this is a principal challenge: but if either party barely labour the juror to appear and to do his conscience, this is no challenge at all, but lawful for him to do it."††

Actions brought either by the juror against either of the parties, or by either of the parties against him, which imply malice or displeasure, are causes of principal challenge; other actions, which do not imply malice or displeasure, are but to the favour.‡‡

4. Challenges *propter delictum*, are for some crime or *Delictum*. misdemeanour that affects the juror's credit, and renders him infamous. As for a conviction of treason, felony, perjury, or conspiracy; or if, for some infamous offence, he hath received judgment of the pillory, tumbril, or the like,

* 3 Black. Com. 361.

† Ibid.

‡ 2 Hawk. 43.

†† Co. Lit. 157.

† Ibid.

§ 2 Hawk. 43.

** Ibid.

‡‡ Ibid.

or to be branded, whipped, or stigmatized; or if he be outlawed or excommunicated, or hath been attainted of false verdict, *præmunire*, or forgery. And it hath been holden that such exceptions are not solved by a pardon. But it seems that none of the above cited challenges are principal ones, but only to the favour, unless the record of the outlawry, judgment, or conviction be produced, if it be a record of another court; or the term be shewn, if it be a record of the same court.*

Further, as to challenges for suspicion of favour; although a juror has not given apparent marks of partiality, yet there may be sufficient reason to *suspect* he may be more favourable to one side than the other, and this is reason for a challenge to the favour. The causes of favour are infinite, and in these inducements to *suspicion* of favour, the question is, “whether the juryman be indifferent as he stands unsworn;” for a juryman ought to be perfectly impartial to either side. †

No challenge
till a full jury.

There can be no challenge either to the array, or to the polls, before a full jury appear: if there be a defect of jurors, the party who intends to challenge the array, may pray a tales, and then challenge the jury. As the challenge to the *array* must be before *any* of the jury are sworn, so challenge to the *polls* must be before the *particular jurors* are sworn. ‡

After a challenge to the array, the party may challenge the polls, but after a challenge to the polls, there can be no challenge to the array; and he who has *more than one* cause of challenge against a juror, must take them all at once: but if he challenge a juror, and the cause be found insufficient, he may nevertheless afterward challenge him peremptorily, for perhaps the very challenge may create a prejudice in the mind of the juror so challenged.§

One challenge
in writing, the
other verbal.

A challenge to the array must be in writing, but a challenge to the polls is short and verbal. ||

* Co. Lit. 157.—2 Haw. 43.—3 Black. Com. 363.

† Ibid.

‡ Bull. Ni. Pri. 8vo. edit. 307.

§ 4 Black. Com. 363.

|| Trial per Pais, 172.

A principal cause of challenge being grounded on a manifest presumption of partiality, if it be found true, it unquestionably sets aside the array, without any other trial than its being made out to the satisfaction of the court, before which the panel is returned.

But a challenge to the favour, when the partiality is not apparent, must be left to the discretion of the triers.*

If the array be challenged, it lies in the discretion of the court *how* it shall be tried: sometimes it is done by two attorneys, sometimes by two coroners, and sometimes by two of the jury; with this difference, that if the challenge be for kindred in the sheriff, it is most fit to be tried by two of the jurors returned; if the challenge be on account of partiality, then by any other two assigned thereunto by the court.†

How challenges to be tried.

And when a challenge is to the array for favour, the plaintiff may either confess it, or plead to it; if he plead, the judges assign triers to try the array, which seldom exceed two, who being chosen and sworn, the clerk of the peace declares to them the challenge; and concludes to them thus, "*and so your charge is to inquire whether it be an impartial array, or a favourable one;*" and if they affirm it, the clerk enters underneath the challenge, "*affirmatur;*" but if the triers find it favourable, then thus, "*calumnia vera;*"‡ or words to that effect.

As to a challenge to the polls; if a juror be challenged before any juror is sworn, two triers shall be appointed by the court; and if he be found indifferent, and sworn, he and the two triers shall try the next challenge; and if he be tried and found indifferent, then the two first triers shall be discharged, and the two jurors tried and found indifferent shall try the rest. But if the plaintiff challenge ten, and the prisoner one, and the twelfth be sworn, then he that remains shall have added to him one chosen by the plaintiff, and another by the Prisoner, and they three shall try the challenge; and if six be sworn, and the rest chal-

* Co. Lit. 157.

† 2 Hale, 275.

‡ Trial per Pais, 168,

lenged, the court may assign any two of the six sworn to try the challenges.*

The truth of the matter alleged as cause of challenge must be made out by witnesses, to the satisfaction of the triers; also the juror challenged may on a *voir dire* (*Veritatem dicere*, to speak the truth), be asked such questions as do not tend to infamy or disgrace.

But a juror is not to be asked whether he have been whipped for larceny, or convict of felony, and such questions as tend to discover matters of infamy or shame.†

Panels may be reformed.

In cases where the King is party, the justices of gaol-delivery, or of the peace in session, may reform the panels of jurors, by putting to, and taking out, the names of the persons impanelled, by their discretion; and if the sheriff do not return the panel so reformed, he shall forfeit 20*l*. half to the King and half to him that shall sue.‡

This act extends not only to panels of grand inquests, but also to panels of the petty jury. §

Jury called.

The challenges being now supposed to have been concluded, and the jury full, the clerk of the peace calls the jury to be sworn, every man severally, and this is done in the following manner, calling the first juror :

Sworn.

“ You shall well and truly try, and true deliverance make, between our Sovereign Lord the King and the Prisoners at the bar, whom you shall have in charge, and a true verdict give according to the evidence. So help you God.”

Then call the second juror, and so swear him in like manner, and so on to twelve, and neither more, nor less.

The crier then counts the jurors, as the clerk of the peace reads their names, and asks them “ if they are all sworn.”

Then the clerk of the peace calls the Prisoner named in the indictment, to the bar, and bids him hold up his hand, and then says to the jury, “ Look upon the Prisoner, you that are sworn, and hearken to his cause.”

* 2 Hale, 275.

† 3 Hen. 8. c. 12.

‡ Trial per Pais, 158.—Salk. 183.

§ 2 Hale, 186, 295.

"A. B. stands indicted by the name of A. B., &c. (*reading the whole indictment as he did upon the arraignment, and then says,*) read. The indictment Upon this indictment he hath been arraigned; upon his arraignment he hath pleaded not guilty; and for his trial hath put himself upon God and the country, which country you are; so that your charge is to inquire, whether he be guilty of this felony, whereof he stands indicted, or not guilty; if you find him guilty, you shall inquire what lands, tenements, goods, and chattels he had at the time of the felony committed, or at any time since; if you find him not guilty, then you shall inquire if he did fly for it, or not; if you find he did fly for it, then you shall inquire what goods and chattels he had at the time when he did fly for it, or at any time since; if you find him not guilty, and that he did not fly for it; say so, and no more, and hear your evidence."

The reason of these latter words is, that if the jury find ^{Flight.} that the person accused fled, his goods and chattels are forfeited, upon the presumption that guilt is to be inferred from flight. It is not usual, however, now for the jury to find the flight.*

The court then proceeds (if no advocate be employed,) ^{Witnesses} to the examination of witnesses upon their oath, first for ^{sworn.} the prosecution, and afterward for the prisoner; and the oath is administered by the clerk of the peace in the following form:

"The evidence that you shall give between our Sovereign Lord the King, and the Prisoner at the bar, shall be the truth, the whole truth, and nothing but the truth. So help you God."

Formerly it was a settled rule that no counsel should be ^{Counsel how far allowed to assist Pri-} allowed to a Prisoner upon the general issue, on an indictment of treason, or felony, unless some point of law arose ^{soner.} proper to be debated;† but of late years it has been usual to allow counsel to examine, and cross examine, witnesses, and otherwise to assist such prisoners, as well for felonies, as for misdemeanours; with this difference, however, that in felonies they are not allowed to address the jury.‡ When the prosecutor has counsel, if two, it is the duty of the junior to state the substance of the indictment, and of the senior to enlarge upon the circumstances of the case.

* 4 Black. Com. 387. † 2 Hawk. c. 39. ‡ 4 Black. Com. 356.

If there be only one counsel, both parts of the duty devolve upon him. Whatever case he offers, by that he must abide; for it would be great prejudice to a prisoner to try the success of one accusation, and then abandon it to try another. The next step is to examine the witnesses for the prosecution, which, if only one counsel, is done by him; if there be two, by them alternately. As the witnesses are dismissed in succession by the counsel for the prosecutor, they are cross-examined, if necessary, by the Prisoner, or his counsel, if he have any. On the original examination, or, as it is called, the examination *in chief*, leading questions are not to be put; *i. e.* questions which, under the disguise of inquiry, do really suggest the desired reply; but in cross-examination considerable latitude is indulged (subject to the restrictions elsewhere observed upon,) even to leading questions,* and to hypothetical inquiries.† If, upon this cross-examination, any new matter of inquiry, material to the case, arise, the counsel for the prosecution have a right to their cross-examination on that specific matter; but if no new matter be elicited by Prisoner's cross-examination, the prosecutors are concluded by their first examination, and the Court alone has any right to examine further, a privilege which it may, *in its discretion*, exercise on its own suggestion, or at the suggestion of the counsel on either side, in order to supply any deficiencies of evidence, or to elucidate any thing that is doubtful, which may, from inadvertency, have escaped proper inquiry; but the exercise of this authority is entirely discretionary.

**Court bound
to assist.**

If no counsel attend for the prisoner, it is the duty of the Court to examine witnesses for him, to advise him for his benefit, and to assist him in defending himself; taking advantage, moreover, of every obvious defect or irregularity in the proceeding of the prosecution, which may serve to acquit him;‡ and above all, to hear patiently and

* Peake's Compend. 206.

† Phil. Evi. 104.

‡ The law having assigned no particular limit to the degree of protection which a court is in duty bound to afford a Prisoner who has no

favourably whatever defence he himself may think fit to make.*

Being now arrived at that stage of the proceedings when Evidence. the testimony both for the prosecution, and the Prisoner, is exhibited, it becomes necessary to take, at least, a general view of the whole law of evidence; but more especially of those parts of the system which particularly apply to criminal proceedings, and to parochial controversies; because such subjects comprehend the principal business of a session of the peace. This review must of necessity be cursory, to be consistent with the plan of the work.

First, then, as to the matter to be proved (in order to support an indictment,) by evidence. Matters to be supported by evidence.

Secondly, as to the evidence itself, by which it is to be supported.

1st. An indictment, then, consisting of one, or more, substantive charge, or charges, with certain averments, which give the completion to the principal naked fact charged, as time, place, &c. &c. it becomes necessary, at this stage of the proceedings, to take a view of the parts to

counsel, it may depend on a great variety of circumstances: 1st, on its astuteness in discovering the legal or technical objections which may be in the Prisoner's favour; 2dly, in its discretion respecting the duty imposed on it of insisting on them to a greater, or a less, extent. Buller, J. in a case of great enormity, at Nottingham assizes, in which the Counsel of these sheets was of counsel for the prosecutor, took occasion to observe, that there was scarcely any maxim in practice which had been more misunderstood than that of "the court being of counsel for the Prisoner." All, he said, that could, in justice to the crown and the public, be intended by it, was, that "it was the duty of a court, in such circumstances, to take heed that a Prisoner was not oppressed by the ingenuity, or eloquence, of counsel on the adverse side, that the real merits of the case were fairly brought before the jury, equally without concealment or exaggeration, that the indictment be so framed as to bring the fact charged upon the Prisoner within the legal description of the crime, and to see that the evidence produced in support of it be according to the rules established." This, he observed, was "to be of counsel for the Prisoner;" but that those who supposed it incumbent on a judge to take all those technical objections in his favour, which would be the duty of a counsel, were no less mistaken in the principle, than in the policy, of the maxim.

* Dalt. 185.

Place.

Time.

which the evidence is to be applied. Every allegation which enters into the substance of the charge, or goes to prove that, on which the particular criminality charged depends, must be maintained by evidence, or the prosecution will fail; but any averments which are immaterial, or, in other words, which are not essential to constitute the particular offence charged, may be overlooked,* as not calling for any evidence to support them. Thus the *place* where the offence was committed, to a certain qualified degree of exactness† at least, is a constituent item of the charge to be proved, because on that depends the question whether the *venire* be rightly laid. The *time* must, at least, so far be proved in all cases as to shew that the charge is not laid at a period previous to any offence having been committed. In some offences, as has already been noticed, the exact *time* enters into the essence of the charge, and then considerably further precision becomes requisite.‡ Many other circumstances, according to the nature of the offence, will be essential, and the averments of them necessary to be proved, more, indeed, than it would be convenient to enumerate here; but, by way of example, may be adduced the common occurrence of an indictment for a nuisance: if it be of a road out of repair, all the circumstances which contribute to shew that it is a *high*, or *public*, road; that the defendants particularly ought, of right, to repair it, &c. &c. are all essentials to constitute the offence, and, therefore, all essential to be proved in evidence. So in an indictment under the last statute for the protection of game‡ (a very common subject of prosecution at sessions), the principal point of the charge is, “idle and disorderly persons entering into any forest, chase, wood, &c. &c. with intent *to kill game* ;”§ but there are a great many concomitant circumstances which go to complete the offence prohibited; as its being between certain specified hours (which, are declared by the act to constitute *night time*), and the parties being prepared with certain arms of a kind to manifest certain specified intentions; and these circum-

* 2 Leach, 594.

† See *ante*, p. 170.

‡ See *ante*, p. 171.

§ 57 Geo. 3. c. 90.

stances being necessary to render the offence complete, which is the subject of the indictment, are essential to be proved in evidence.*

From what has been advanced, however, it may be collected, that though it be necessary to prove so much of the indictment as shews the defendant to have been guilty of a substantive offence, that it is not necessary to prove it to the very utmost extent as laid. Therefore if the charge were, that the defendant sent, *and* caused to be sent, a certain threatening letter, it would be sufficient to prove *either* of these allegations; *i. e.* that he sent it, *or* that he caused it to be sent: or, if he were charged with having printed *and* published a certain libel, it would be sufficient to prove that he published it, without proving that he printed it.†

Respecting one of the points to which we have been just adverting, *viz. locality*, considerable facilities have been given to prosecutions in the three particular instances of larceny, by two recent statutes;

1. On board vessels employed on inland navigations;
2. On stage coaches, waggons, and other carriages; and,
3. On the borders of counties.

By the former of these, 59 Geo. 3. c. 27. it is enacted, 59 Geo. 3. that "in consequence of canals and other navigations ^{c. 27.} passing through several counties, forming the boundaries of counties on each side or bank, it can seldom be ascertained within what county felonies committed by breaking open casks and packages, containing goods, wares, and merchandizes, on board of vessels employed in carrying the same, may have been actually committed; and therefore it enacts, that from the 19th of May, 1819, in any indictment for felony committed on board any barge, boat, trow, or other vessel whatever, employed or used in carrying or conveying any goods, wares, or merchandize, or in which any such goods, &c. shall be, in or upon any canal, navigable river, or inland navigation, in any part of the United Kingdom of Great Britain and Ireland, it shall be sufficient to *alledge that such felony was*

* 2 Hale, 174.

† 2 Campb. 583.

committed within any county or city, through any part whereof such boat, barge, &c. shall have passed in the course of the voyage or journey, during which such felony shall have been committed; and in cases wherein the sides or banks of any navigable river, canal, or inland navigation, or the centre thereof, shall constitute the boundary of any two counties or cities, it shall be sufficient to alledge that such felony was committed in either of the said counties or cities through which, or any part thereof, such boat, barge, &c. shall have passed in the course of their voyage, &c. during which such felony shall have been committed. And every such felony shall and may be enquired of, tried, &c. in the county or city within which the said felony shall so be alledged to have been committed."

59 Geo. 3.
c. 96.

By the latter of these two statutes, 59 Geo. 3. c. 96. similar provisions are made for the trial of felonies committed on stage coaches, stage waggon, and other carriages, on their respective journeys. It is prefaced by a similar recital to that of the former statute relative to vessels, and proceeds to enact, that from the 12th July, 1819, "in any indictment for felony committed on *any stage coach, stage waggon, stage cart, or other such carriage whatever*, employed or used in carrying or conveying goods, wares, and merchandize, or in which any such goods, wares, or merchandize shall be, in or upon, any highway in any part of the United Kingdom of Great Britain and Ireland, it shall be sufficient to alledge, that such felony was committed within any county, or city, through any part whereof such coach, waggon, &c. shall have passed in the course of the journey during which such felony shall have been committed; and in all cases where any highway shall form the boundary of any two counties, it shall be sufficient to alledge, that such felony, committed as aforesaid, was committed in either of the said counties through which, or any part whereof, such stage coach, waggon, &c. shall have passed in the course of the journey during which such felony shall have been committed; and every such felony shall and may be inquired of, tried, &c. in the county or city within which the same felony shall be so alledged to have been committed." § 1.

Therefore these two statutes, it may be observed, have

proceeded to remove one of the objections to the prosecution of felonies committed on *conveyances*, by land, and by water, arising out of the difficulties of ascertaining *the place* of the actual commission of the offences.

The second section of the last-mentioned statute is much more comprehensive, and extends to all felonies, the difficulties of ascertaining the locality of which operated as an impediment to conviction. It is as follows :

" And whereas felonies are sometimes committed on, or so close to, the boundaries of two or more counties, that the offenders escape unpunished from the defect of proof that the felony with which they are charged was actually committed *within the county* in which such offenders may be indicted ; be it therefore enacted, that from and after, &c. in any indictment *for any felony* committed on the boundary or boundaries of two or more counties, or within the distance of five hundred yards of any such boundary or boundaries, it shall be sufficient to alledge that such felony was committed in either, or any, of the said counties ; and every such felony shall and may be enquired of, tried, and determined in the county within which the same felony shall be so alledged to have been committed ; and all and every person and persons who shall be convicted of any such felony, so to be inquired of, &c. shall be subject and liable to all such pains, penalties, and forfeitures, as such person or persons would have been subject and liable to, in case such felony had been inquired of, &c. in the county in which the same was actually committed." § 2.

2d. The first great comprehensive rule respecting evidence generally, which runs through the whole system of English jurisprudence, is that, in all cases, both civil and criminal, the best evidence, of which the nature of the case admits, shall be required ; and that in no cases, except a few which are *ex necessitate rei* taken out of the general rule, shall any of inferior authority be admitted.*

Evidence to an indictment.

* Law of Evid. 280. Peake's Compend. 9. This rule, though generally true in theory, has some exceptions in practice, for which it is not very easy to account. In an indictment against a person for forging the name of another to a note or bill of exchange, one would reasonably imagine that the person whose name is alledged to be

Best not to be
obtained.

For if it appear that better evidence might have been produced, the very circumstance of its being withheld, furnishes a suspicion that it would have prejudiced the party in whose power it is, had it been so produced. On this principle it has been uniformly decided as a general rule, that the execution of a deed can only be proved by one of the subscribing witnesses.* This however proceeds on the supposition that such one is alive, and his presence to be obtained; if either of these possibilities fail, the *next best* evidence becomes the best, and therefore admissible.† What that may be, must depend on the circumstances of each particular case: sometimes it can in its nature amount to no more than strong presumption, as similarity of seals or hand-writing; but still if it be the best evidence the case admits of, it is sufficient, subject to observation on its degree of probability, and consistency.

Thus, if an original document of any kind be necessary in evidence, and it be in the adversary's hands, a copy must be admitted, because it is the *best obtainable* evidence, the better evidence being not obtainable by the party producing the copy, for its being in the adversary's hands, is positive proof that it cannot be given by the party offering the copy.‡ And in criminal matters, the defendant can never be *forced* to produce any evidence against himself, even though he should hold it in his hands in court.§ In pursuance of the foregoing principle, if a copy cannot be obtained, parol testimony becomes the next best evidence,

counterfeited, would be the *best* evidence to prove that the name subscribed was not his hand-writing; yet it is every day's practice at the Old Bailey, to prove that negative fact, by the evidence of the clerks in the Bank, who are in the daily habit of seeing the persons whose office is to sign the notes of the company, write their names, without requiring the presence of the particular party himself, whose name is counterfeited. *R. v. Newland*, 1 Leach, 350. 2 East, P. C. 1002. Attempts have been made to reconcile this practice to the general principle, and no doubt they must be satisfactory, or the practice itself would not continue to proceed. *Phil. on Evid.* 77. *R. v. Ponsonby*, 1 Leach, 37.

* Though there are more than one, however, one is sufficient. *Phil. on Evid.* 79.

† 3 Black. Com. 368.

‡ *Bull. Ni. Pri.* 294.—2 T. R. 201.

§ *R. v. Hervey*, Bur. R. 2488.

and therefore admissible. Proof that the original is *lost*, or *no longer in existence*, will be sufficient to confer on a copy, or on parol testimony, respectively, a similar degree of authority and admissibility. Thus, where one got momentary possession of a note which he had forged, and swallowed it, in order that it might not be produced in evidence against him, parol testimony of its contents was admitted.*

In a former page, it has been observed, that when it is intended to give evidence of an instrument in the possession of the adverse party, in order to let in such evidence, a notice must be given to produce the original, on failure of, compliance with which alone, the inferior degree of testimony to its contents can be admitted. It is necessary in this place to notice, however, that the necessity for such notice is of course dispensed with in cases where from the nature of the charge itself, the defendant is *supposed to be in actual possession* of the instrument which is the subject of it. Thus, if one be indicted for stealing any valuable instrument, parol testimony of the contents may be given. †

It may indeed happen that a fact may be *equally well* Two kinds
proved through two different *media*; as, for instance, the equally good.
fact of a person being *rated* to a parochial rate, cannot be proved but by the production of the rate itself, *if obtainable*; but to prove that a person *possesses rateable property*, although the production of the rate might shew that he was actually *rated* for it, yet the rate itself is not absolutely necessary to shew the mere possession of property *liable to be rated*. †

Having laid down these general rules, which are applicable to *every* description of evidence, we come next to the division of it into its different kinds; and the *first great* Division of
line of that division, is between *written or documental evidence, and oral or parol testimony*. These are again divisible into minuter distinctions; but first, it is proper to observe, that oral testimony, being most commonly applicable to trials for criminal offences, (the subject we are now

* 14 E. R. 276.

† Phil. on Evid. 217.

‡ 15 E. R. 22.

- examining) while written is principally called for in the civil controversies, as, *ex. gr.* on appeals respecting settlements, the former, which the law denominates *parol*, must be our first subject of consideration. It presents itself in three points of view, viz. 1st, the *number*, 2dly, the *quality*, 3dly, the *obligation* of witnesses.
- Parol.** 1st. The common law did not require any specific number of witnesses, for the trial of any crime whatever, and therefore where it is not specially provided otherwise, one witness continues to be sufficient to convict an offender. The general rules upon this subject may be briefly given thus.
- Number of witnesses.** In treason, which works corruptions of blood, two witnesses are required.* Where the conviction does not work corruption of blood, one witness is sufficient. †
- In treason.** In perjury also two are, of course, necessary to give a preponderance; for otherwise it would only be oath against oath, and a jury would have a very doubtful right to conclude on the falsehood of that sworn by the defendant. ‡
- In perjury.** But generally in all other offences (unless in a few instances by statute, and which are chiefly, though not entirely, confined to summary convictions on disputes between masters and workmen in particular trades) one witness is sufficient to convict offenders of all descriptions before justices either *in*, or *out of*, session.
- One witness generally sufficient.** 2dly. Generally all persons are capable of being witnesses who are of sane mind, and may be presumed to have a proper sense of the obligation of an oath.—For it is an universal rule in all criminal cases, that no testimony shall in any case, or under any circumstances, be admitted without oath. § Subject then to these rules: infants, persons deaf and dumb; as also Jews, Mahometans, Gentoos, Scotch Covenanters, and other sects, being respectively sworn according to their rules of faith, and modes of understanding it; are *admissible* witnesses. ||
- Quality of witnesses.**

* 7 W. c. 3.

† 1 Leach, 39.

‡ Peake's Compend. 10.

§ 2 Str. 700.

|| Leach, 114. 347.—Bull. N. P. 242.—Peake's Compend. 136.

On these descriptions of persons, however, separately *Infants*. considered, some few observations may be, at least, convenient, if not absolutely necessary. With respect to *infants* there is not, nor can there be, any precise rule with respect to age. The admissibility to give their testimony must depend on the obvious maturity of intellect in each individual instance, and on the susceptibility of the obligation to speak truth imposed by an oath, to be ascertained by the enquiry and examination by the court. * But where the capacity to understand be apparent, and only instruction be wanting, the court in its discretion may postpone the trial for a reasonable time till the nature of such obligation be sufficiently impressed. † And no age, however tender, is absolutely excluded from admissibility; but as infants are holden incapable of committing any capital offence under the age of seven years, ‡ a general concurrence of opinion seems to have taken place, that, except under *very particular* circumstances, no infant *under that age* should be admitted a witness.

No organic defect, which does not imply a deficiency of *Persons deaf, dumb, &c.* understanding, can be any objection to the admissibility of a witness; therefore a person *deaf and dumb*, may be as competent to give evidence as any other person, if a medium of communication between such person and an interpreter can be established to the satisfaction of the court, so that the requisites to admissibility, viz. his comprehension of the subject, his knowledge of moral and religious obligations to speak truth, and of the temporal danger of perjury, be ascertained. § The same principle of competence with respect to comprehension extends also to insane persons having lucid intervals. If the court is satisfied of their comprehension of facts, and of their responsibility, as well moral, as civil, they are *competent* witnesses in point of law, however subject to observation as to credit. ||

But the general rule is best illustrated by considering *Exceptions*.

* *Brazier's case*, 1 Leach, 238.

† *R. v. White*, Id. 483.

‡ 1 Hale, 19.

§ *Ruston's case*, 1 Leach, 455.

|| 2 Hale, 278.

the exceptions, which are reducible briefly to the following instances.

Atheists.

1st. Atheists, because having neither hopes of reward, nor fear of punishment, no test, or rule of faith, can bind their consciences.

Persons infamous.

2dly. Persons rendered infamous. By which it is to be understood that a conviction, and therefore, much more an attainder, or judgment of *treason, felony, piracy, præmunire, perjury, forgery*, and also a judgment in *attaint* for giving a false verdict, or in *conspiracy* at the suit of the King, are good causes of exception against a witness, *while they continue in force*; for where a man is convicted of those glaring crimes, against the common principles of humanity and honesty, his oath is of no weight.

Also it was anciently held, that judgment for any crime whatsoever to stand in the pillory, or to be whipped, or branded, being in a court which had a jurisdiction, rendered the party infamous, and incompetent to be a witness; but the rigour of this piece of law is reduced to reason; for now it is holden, that unless a man be put in the pillory, *pro crimine falsi*, that is, for some crime which renders him infamous, as for perjury, forgery, barrettry, conspiracy, * or the like, it is no blemish to his attestation: for it is the crime, and not the punishment, that makes the man infamous. †

Barrettry.

Thus where a man was convicted of barrettry, though he was only fined, the court held him incompetent; ‡ so also till a modern statute, § a person convicted of, and whipped for, petit larceny, was incompetent, because he was rendered infamous. But as the law stands now, a person convicted of grand larceny is restored to his credit by being admitted to his clergy, and a person convicted of petit larceny by force of this statute. Besides which, a King's pardon will restore every man to his credit, except in the

Restoration to credit.

* R. v. Priddle, 1 Leach, 496.

† Bull. N. P. 291.—38 Geo. 3. c. 45. By which statute fine and whipping are substituted for what is here denominated "branding," which was marking the ball of the thumb with a hot iron, under a statute of Hen. 7.

‡ Salk. 690.

§ 31 Geo. 3. c. 35.

solitary instance of conviction for *perjury under the statute*, by which the power of pardon is specifically taken away.* But a convict under sentence of death is an incompetent witness, although he produce the *sign Manual*, for nothing less than a pardon passed *under the Great Seal* can restore the competency of a witness.†

However, the party who would take advantage of any of these exceptions to witnesses, must be prepared with a copy of the record of conviction, to produce in court, for otherwise the objection will fail.‡ For it is a general rule, that a witness shall not be asked any question, the answering to which might oblige him to accuse himself of a crime: and that his credit is to be impeached only by general accounts of his character and reputation, and not by proofs of particular crimes, whereof he was never convicted.§ Thus on an indictment against an apprentice for enlisting himself as a soldier without the consent of his master, the indentures must be proved by one of the subscribing witnesses.¶

Conviction must be produced to impeach the credit of witness rendered infamous.

And the party interested in the testimony of a witness, who is objected to on account of his having been convicted of felony, and his imprisonment not being yet expired, is entitled to insist on *proof of such conviction by the record*, and that even though the fact be admitted by the witness himself.**

Neither are witnesses permitted to give evidence of their own infamy or turpitude.†† Thus one was not admitted to swear, that he was *suborned and perjured*.‡‡ But of the fact of having received the punishment inflicted on those crimes, viz. having stood in the pillory, has been allowed to be asked.§§ This, however, is denied by very recent authority; || and it is said, that nothing ought to be asked which tends to throw obloquy on moral character.

Cannot impeach themselves.

But a witness cannot by law refuse to answer a question

* Bull. N. P. 292.

† R. v. Gully, 1 Leach, 115.

‡ Bull. N. P. 292.

§ 2 Hawk. c. 46.

|| R. v. Jones, 1 Leach, 208.

** R. v. Castel Carcinion, 8 E. R. 72.

†† 4 Inst. 279.

‡‡ 3 St. Tri. 427.

§§ R. v. Edwards, 4 T. R. 440. || Phil. Evid. 104. 3 Campb. 519.

relevant to the matter in issue, the answering of which has a tendency to accuse himself, or to expose him to penalty or forfeiture of any nature whatsoever, by reason only, that the answering such question may establish or tend to establish that he owes a debt, or is otherwise subject to a civil suit, at the instance of his Majesty, or of any other person.* But otherwise, if in his opinion the answering of it will expose him to penalties. †

Interested persons.

3dly. Persons *interested*. It is a general rule of evidence, that persons interested cannot be witnesses, and much nice discrimination was formerly requisite for the perfect understanding of it, as it applied to the *competency* or *credit* of witnesses in civil actions; much of that is now done away, and as it is connected with criminal proceedings, examples, sufficient to indicate the boundary line of principles at least, may be within the limit that is admissible. To some of these there are indeed numerous exceptions, both by statute and otherwise; but, generally, the rule now to be deduced from a long succession of determinations is, that when an *immediate*, and *certain* interest can be shewn, it is an absolute objection to competency, but that when it is *uncertain*, or *remote*, it only goes to the credibility of the testimony. This will be best exemplified, as we proceed, by particular examples.

In all public prosecutions for offences, where any advantage is certainly to arise to the prosecutor, there he cannot be a witness, because it would be to attest in his own behalf; but where there is only a fine to the King, and nothing goes to the prosecutor, then he may be a witness. ‡

So a person whose property may be prejudiced by a forgery, is no evidence to prove it on an indictment, because he has an *immediate* interest in the success of the prosecution. §

But the interest must be immediate, not remote. Thus, the person whose name is forged to a receipt, is not a competent witness to prove the forgery. ||

* 46 Geo. 3. c. 37.

† Cotes v. Hardacre, 3 Taunt. 424.

‡ R. v. Treble, 2 Taunt. 328.

§ Law of Evi. 126.

|| R. v. Russel, 1 Leach, 10.

Nor a person who has been imposed upon, and tricked into signing a promissory note, to convict the party for that offence. *

Nor the assignee of a certificate to a navy bill, whose name is charged to be forged to an acquittance for the money, to prove the forgery. †

Nor an excutor named in a subsequent will by the same testator to that which is charged to be forged, to prove the forgery.

But in all cases, civil and criminal, where a witness has no immediate interest, i. e. where the interest is very remote, or uncertain, or nearly counterbalanced, he is a competent witness. ‡ And this rule, or rather exception to the general rule of competency, is so obvious and intelligible, that it is unnecessary to multiply either examples or authorities. Exceptions.

And a person whose signature is forged may be made a competent witness to prove the forgery by being released from the payment. § So, if the money have been recovered from some other person, because then he is no longer interested, as it cannot be recovered twice. ||

And if the interest be not immediate, but remote, it will not prevent the party possessing it from being a witness, as is clear from a great number of cases respecting parish rates to be noticed very soon. **

But an owner of property, although that property was let to a tenant for a long term, who paid all the rates by engagement, was determined to have that permanent interest, though somewhat remote in point of time, in the land, as to render him an incompetent witness to discharge it from the burden of repairs of any public work, to which it is alleged to be liable. *R. v. Kridford*, 2 East. R. 559, was strongly insisted on to show that there must be an interest existing at the time, but the interest in an owner Some interests
contingual and
permanent.

* *R. v. Whiting*, *Ld. Raym.* 396. † *R. v. Hunter*, 1 *Leach*, 723.

‡ 1 *T. R.* 164.—5 *T. R.* 66.—7 *T. R.* 481.—2 *East. R.* 559.

§ *Leach*, 150.

|| *Bull. N. P.* 281.

** *Cald. Ca.* 551.

was considered as always existing, though burdens may not be always accruing.*

Husband and wife.

Exceptions.

Husband and wife, generally speaking, cannot be admitted witnesses for, or against, each other, because their interests are the same; but to this rule also there are many exceptions. In the first place, it does not hold in high treason; nor in abduction and forcible marriage; nor in an indictment against the husband for polygamy (the second wife being absolved from all common interest with her husband, by the marriage being void;) in breaches of the peace by the husband against her person; nor in indictments for assaults by other persons on the husband, for the King being the prosecutor, and the fine, if any, going to the King, no interest accrues to the husband, wherefore both himself and his wife are good witnesses. †

An extraordinary case on this subject of husband and wife being witnesses against each other, was tried before Lord Ellenborough at Chelmsford, 1817. R. P. was indicted for stealing nine pecks of clover seed, the property of Anne Butcher, and W. B. for receiving it, knowing it to be stolen. Anne Butcher did not appear, and it was moved, that her recognizance should be discharged, because by intermarriage with R. P. the felon, she was disabled from giving evidence against him. Lord Ellenborough admitted, that she could not be required to give testimony against her husband, but refused to discharge the recognizance. ‡

But no other degree of kindred, or affection, as that of parent and child, or the like, will prevent a person from being a witness, but nevertheless such evidence is open to observation. §

And there are cases, where, from the necessity of the thing, persons interested must be allowed to be witnesses: thus in removing an indictment by *certiorari* from the sessions to the King's Bench; though the prosecutor in

* *Rhodes v. Ainsworth*, M. 58 Geo. 3. B. R.

† 1 Dick. Pract. Expos. *title EVIDENCE*, sect. 3.—*Peake's Compend.* 193.—*R. v. Stent*, O. B. Sept. 1819.

‡ 3 Dick. Pract. Expos. 935.

§ 1 Salk. 289.

that case, if the defendant be convicted, is entitled to his costs, yet he is allowed as a witness; for if the giving of costs should take off the evidence of the prosecutor, the act of Parliament designed to discountenance the removal of suits by *certiorari*, would give the greatest encouragement to them that is possible.*

So, before the rewards on conviction were taken away by statute recently, the evidence of a man was received, who prosecuted a burglar to conviction; though in case of such conviction of the offender, he was entitled to a reward of 40*l*. for the intention of the act of Parliament would have been quite defeated, if the reward should take off the evidence.†

The parishioners or inhabitants of parishes, townships, *Parishioners*, and other places, were not admissible witnesses to prove the perpetration of such offences within their parishes, for which pecuniary penalties were inflicted, applicable to the use of the poor, till they were made so by statute.‡

But it was provided by that statute, that the "inhabitants of every parish should be deemed competent witnesses, for the purpose of proving the commission of any offence, within the limits of their parish, notwithstanding the penalty incurred by such offence, or any part thereof, may be given to the poor of such parish, or otherwise for the benefit or use, or in aid or exoneration of such parish; so as the penalty to be recovered shall not exceed the sum of 20*l*." And this exception to the general rule of incompetency from interest, has been further extended by a still more recent statute,§ which enacts, that "no inhabitant or person rated, or liable to be rated to any rates, or cesses of any district, parish, township; or hamlet, or wholly, or in part, maintained or supported thereby, or executing or holding any office thereof or therein, shall, before any court or persons whatsoever, be deemed and taken to be, by reason thereof, an incompetent witness for or against such district, parish, &c. in any matter relating to such rates or

* 10 Mod. Rep. 199.

† 27 Geo. 3. c. 29.

‡ Ibid.

§ 54 Geo. 3. c. 107.

cesses; or to the *boundary* between such district, &c. and any adjoining district, &c.; or to *any order of removal* to or from such district, &c. or the *settlement of any pauper* in such district, &c.; or touching any *bastards* chargeable, or likely so to be, to such district, &c.; or the *recovery of any sums* for the *charge or maintenance* of such bastards; or the *election or appointment* of any officer or officers; or the *allowance of accounts* of any officer of such district, &c. § 9.

Before these acts, it had been holden no objection to the testimony of an inhabitant of a parish, that he was *liable* to be rated to the relief of the poor, but not rated in fact; that he had an interest in the penalties to be recovered for the use of the poor, by his testimony, because that he might eventually be benefited by the distribution thereof, and thereby eased of a proportion in his assessment; for the distinction had long been taken, that where the inhabitant does not actually pay, his mere *liability* was that sort of *remote* interest that should not take away his testimony.*

But it had been decided, that a *rated* inhabitant was to all *general* purposes of his parish an interested, and therefore an incompetent, witness, insomuch that after a settlement proved by appellants in a *third* parish, a *rated* inhabitant of such *third* parish was held *not* a competent witness for respondents to disprove that settlement, for his interest in the judgment was direct; as the order, if confirmed, would be conclusive evidence of settlement *at that time*, in appellant's parish upon subsequent order of removal from thence to such third parish.†

But that on an appeal from an order of removal, the respondents might compel an inhabitant of the parish appealing, who is *not rated* to any of the parochial taxes, to be examined: and might also produce an inhabitant of their own parish, who was not rated, and the evidence of such inhabitant shall be received, "for," said the court, "mere inhabitancy does not create interest."‡

Since the statute just referred to, the objections to in-

* Cald. Ca. 551.—4 Term R. 17.—2 Bott. 756.—2 East's Rep. 559.

† 15 East's R. 471.

‡ 6 Term R. 157.

competency in parishioners are indeed reduced to an extremely narrow circle; but still it must be observed, after all, that its professed purpose is only to extend the competency of inhabitants rated, or liable to be rated, to be examined as witnesses on the subjects therein mentioned, numerous and extensive as they indeed are; not to alter the general principle of the law respecting the incompetency of interested persons as witnesses.

If an indictment be preferred against a county for the non-repair of a bridge, and the question be merely whether it be in repair, inhabitants of the county are competent witnesses. Their interests are small, contingent, and remote.*

It has been long settled, that it is no exception against the competency of a witness that he has a wager on the event of a prosecution;† but it nevertheless is an objection of considerable weight against his *credibility*; for no doubt he has an interest, but it is both *remote* and *uncertain*. On the same principle, persons who *will be* entitled to a restitution of goods, as a *consequence* of a conviction, have always been holden competent witnesses to convict.‡

Nor is it any objection to a witness that he hath confessed himself to have been guilty of the same crime, if he have not been indicted for it; for if no accomplices were to be admitted as witnesses, it would be generally impossible to find evidence to convict the greatest offenders. Also it hath been often ruled, that accomplices who are indicted, are good witnesses for the king, until they be convicted. And that an accomplice may give evidence before a grand jury against a *particeps criminis*, though not previously admitted as witness for the crown. §

But the bare uncorroborated testimony of an accomplice, has seldom been thought of sufficient credit, to put a prisoner upon his defence; however, the practice of rejecting an unsupported accomplice, is rather a matter of

* Peake's Compend. 169.—See also stat. 1 Anne, c. 18.

† 1 M. and S. 11. ‡ Peake's Compend. 167. 217.—3 Esp. R. 68.

§ R. v. Dodd, Leach, 184.

discretion with the court, than a rule of law; for the circumstance of his being an accomplice, goes to his credit only, and his evidence may be left with the jury, although it be entirely uncorroborated by any other testimony; and upon this principle there are instances of Prisoners having been convicted upon the evidence of an accomplice *only*.* A Prisoner may be convicted on the evidence of an accessory after the fact, who received the goods stolen, though uncorroborated by any fact, except that of a felony having been committed.†

Co-Defendants in an information. Also it has been adjudged, that such of the defendants, in an information, against whom no evidence is given, may be witnesses for the others.‡

Three persons indicted for perjury. So if three persons be indicted for perjury, on three several indictments, and one pleads not guilty, the other two may be witnesses for him on the trial, for they stand unconvicted, although they be indicted.§

Attorney of a party. The attorney of a *party* ought not to be examined to any facts, the knowledge of which he obtained in his capacity of *such* attorney, because in that knowledge his employer has an interest confidentially communicated; but otherwise of facts which he obtained the knowledge of, previous to his having been so employed.|| And the rule itself extends to *no other persons whatever*, but counsel and attorneys.**

But few other observations relative to the *qualities* of witnesses, and those not reducible to the heads of *discretion*, *credit*, or *interest*, remain to be offered.

Other description of persons. Excommunicate persons, it was thought, could not be witnesses, because they are legally defunct;†† if this opinion were correct, however, which may be doubtful, they are now rendered good witnesses by a statute,‡‡ which not only respects the offences to which excommunication may be

* 1 Hale, 303.—R. v. Attwood, Leach, 521.—Jordaine v. Westbrook, 7. T. R. 609.

† R. v. Durham et al. Leach, 538.

§ 1 Hale, 305.

** 4 Term Rep. 753.

‡‡ 53 Geo. 3. c. 127.

‡ 2 Hawk. c. 46.

|| 7 East's Rep. 357.

†† Law of Evi. 146.

applied, but removes all *civil* disabilities from persons suffering this religious punishment. Outlaws may be witnesses, for the outlawry has no influence upon their credibility;* Quakers cannot be witnesses, because they will not submit to be sworn, and their affirmation cannot be taken in *any* strictly *criminal* proceedings.† But in a penal statute, where the proceeding is in the nature of a civil suit, though to punish a criminal act, their affirmation may be received.‡ A justice upon the bench, or a juror, may give evidence either for the prosecutor or defendant; but it must be in open court, and not privately before the bench or the jury.§ Whatever witness is produced by either party, may be examined by the other, when he has concluded his evidence for the party who produced him.|| A party cannot call one witness to disprove what another of his own witnesses has sworn.** Either party may make application to the court to have the witnesses examined apart, that is, have all of them removed out of court, and brought in one by one to be examined, and this permission is never refused.††

3. We now come, thirdly, to the *obligation* under which witnesses are to attend and give their testimony. It has been observed in a former page,‡‡ that a recognizance taken before the examining justice, at the commencement of the usual proceedings in criminal accusations, is the most common method for compelling the attendance of the parties concerned in the prosecution, or the defence, at the time of trial; as also that, for compelling the attendance of all other persons not so bound to give their testimony, a subpoena from the clerk of the peace is the proper process. But when a witness, however, is in prison, or on board a ship upon duty, he must be brought up under a writ of *habeas corpus ad testificandum*. §§

Obligation of witnesses to attend,

Recognizance.

Subpoena.

Habeas Corpus.

It is almost unnecessary to repeat, that non-compliance

* Co. Lit. 6.

† 7 & 8 Wm. 3. c. 34.

‡ Phil. Evi. 18.—Cowp. 382.

§ 2 Hawk. 46.

|| 2 Bac. Ab. 296.

** 2 St. Tr. 746.

†† 4 St. Tri. 9.

‡‡ P. 73.

§§ 44 Geo. 3. c. 102.—Peake's Compend. 510.

Forfeiture of
recognizance.

with the terms of the obligation in the recognizance, of course incurs the forfeiture of the penalty, under which the party bound by it undertakes for his appearance, and his performance of the other conditions annexed.*

Not appear-
ing.

If any person upon whom legal process shall have been regularly served from any court of record, to appear to testify or depose concerning any matter depending therein, having had his reasonable expences tendered to him, shall not appear according to the tenor of the process, he shall forfeit 10*l.* with reasonable recompense to the party grieved,† and not only so, but be also subject to an at-

Expences
allowed.

tachment for a contempt.‡ By a recent statute,§ power is given to any court, “where any person shall appear on *recognizance* or *subpœna*, to give evidence to any fraud, petit larceny, or other felony, whether any bill of indictment be preferred to the grand jury, or not, provided the person have in the opinion of the court *bond fide* attended in obedience to such recognizance, to order the treasurer of the county, riding, or division, to pay him such sum as they shall think reasonable, not exceeding his actual expences, beside making a reasonable allowance for time and trouble, if he be in poor circumstances, which order on the treasurer shall be made out by the clerk of the peace for the fee of 6*d.* and no more.” ||

Regulations
respecting
expences to be
made in
session.

The same statute further authorises the justices of counties, cities, towns corporate, &c. at their respective quarter sessions, to make regulations respecting these expences, which regulations are to receive the signature of one of the judges.

Besides the tender of expences, it must also be remembered that a *subpœna* must be served in such time before

* *Ante*, p. 74.

† 5 Eliz. c. 9.

‡ 1 Black. R. 36.

§ 18 Geo. 3. c. 19.

|| This order, for the payment of the expences of the prosecutor and his witnesses, must, where the offence is committed *within a district having a separate jurisdiction*, be made upon the treasurer of that district, and not upon the treasurer of the county or division, within which such district lies.—6 Term Rep. 237.

the trial, that the witness shall have reasonable notice to prepare himself.*

We now come to written or documentary evidence.

Written or
documentary
evidence.

Before we enter upon an enumeration of the documents themselves, that are to be classed under that description, let it be observed, that throughout this volume, the object of it is more to familiarize the mind to general principles, and common practice founded on them, than to enter into nice disquisitions, or to impress it with the recollection of particular cases by name; and therefore, although the variety of written instruments which may occasionally be made evidence, may fairly enough, according to common parlance, be denominated "infinite," the present article will not be extended much beyond those which may probably come into common use in the trial of inferior offenders, the adjustment of disputes respecting parochial rates, and the decision of cases of settlement, at the quarter sessions.

Confessions (by which are *primarily* intended confessions made before the examining justice, in the first instance, by the party accused) have always been considered in criminal cases, as of the highest and most decisive authority;† in-
somuch, indeed, that a person may be convicted on that alone, though wholly uncorroborated by other circumstances.‡ But they are admitted only, subject to the following restrictions.

Confessions.

First, they can only be given against the parties making them, and not against any other.§

Secondly, they must be taken altogether, and not by pieces.||

Thirdly, the identity of these confessions must be proved at the trial, before they can be read in evidence; and if, having been written, as they always ought to be, and are supposed to be, they be not proved, they cannot be admitted orally; but if, from some circumstance which may be

To be proved,

* 1 Str. 510.—2 Str. 1150.

† Pract. Expos. *title*, EXAMINATION, Sect. 3.

‡ R. v. Wheeling, Leach, 349. § 2 Hawk. c. 46. || Ibid.

an excuse for their not having been taken in writing, they have not been actually so taken, oral testimony is admissible;* for a confession being the strongest proof of guilt, requires the highest authenticity, and must be proved to have been made without menace or undue terror.

To be voluntary.

But where it is free and voluntary, it is deserving of the highest credit, because it is presumed to flow from the strongest sense of guilt; and it is therefore admitted as proof of the crime to which it refers.†

But confessions are received in evidence, or rejected as inadmissible, under a consideration, whether they are, or are not, entitled to credit: and a confession forced from the mind, by the flattery of hope, or by the torture of apprehension, comes in so questionable a shape, when it is to be considered as the evidence of guilt, that no credit ought to be given to it; and therefore confessions so extorted are uniformly and universally rejected. On this subject, indeed, the practice has gone to an *extreme* of tenderness. For words that imported neither promise nor menace of any kind, but only an earnestness of interest in the party inquiring, from which it was probable the prisoner might *himself infer the intention of holding out hopes*, has been repeatedly taken to invalidate a confession.‡

Confessions reduced to writing at the time of their being received by the examining magistrate, but not subscribed by the party making them, whether from inadvertence, or from refusal, stand in a different predicament. If uncontradicted afterward, they are, when proved, good and sufficient evidence: but if a prisoner think fit afterward to deny the truth of such a confession, it is competent for him to retract it; and though the more common opinion is, that it is admissible to be read in evidence, with the observation that *valeat quantum vulere potest*, it is certainly not decisive, and has even, on some occasions, been wholly rejected.§

However, if any facts are discovered, in consequence of

* R. v. Hale et al. Leach, 635.

† 2 Hale, 285.—Leach, 249.

‡ Leach, 325. 328. 636.

§ R. v. Lambe, Leach, 625, and R. v. Bennet, Id. 627.

even *such* a confession, they may be given in evidence; because facts must be immutably the same, whether the confession which disclosed them be admitted, or not.*

Other sorts of confession, as declarations to gaolers, and other persons, in prison, do not come under *this* view of the subject, and therefore are unnecessary to be considered here. Other descriptions of documentary evidence may be admitted, as ordinarily consisting of,

1. Statutes of the realm, or acts of parliament. Of these it is enough to observe, that "public acts," or acts relating to the general interests of the kingdom, or of any large portion of it, (as *ex. gr.* Bedford Level) or of a whole profession (as *ex. gr.* the body of the clergy) need not be proved further than by the production of the printed statute book. But that in the case of "private acts," or acts relating only to private persons, places, or interests, testimony must be produced of their having been compared with the parliament roll.†

2. Proclamations, addresses, and the articles of war, as printed by the king's printer, are considered as sufficiently proving themselves by their mere production.

3. The gazette, published by the authority of government, is generally sufficient evidence of any act of state or public matter so announced.‡ But the gazette is no proof of any private matters respecting individuals contained therein.§

4. Upon the same general principle, the returns on the books of the navy-office are sufficient evidence that a person of a particular name is dead, but not of the identity of that person, which, if doubtful, must therefore be proved by other evidence.||

5. General history may be given in evidence to prove a public matter relating to the government, or kingdom in general, but not any particular custom, or other matter which affects the private rights of individuals. And even

* 2 Hale, 285.—Leach, 301.

† Peake's Compend. 26.

‡ Id. 84.

§ 5 T. R. 436.

|| 3 Esp. R. 190.—Peake's Compend. 85.

books of general history, as topographical works, are not admissible, on subjects of public history, if any documents, from which they were compiled, be obtainable. *

6. Surveys and inquisitions taken on *public occasions* are evidence to ascertain the rights of individuals, or of parishes, or places, not named in them; but *only* when they have been taken under some *public* authority, and not by that of any private individual. †

Almanacks.

7. Almanacks are good evidence to prove on what day of the week a particular day of the year fell, and such like events, for there can be no other evidence of such things. ‡

Records of courts.

8. Records of the king's courts prove themselves, and the rolls of courts *not* of record, so far as they affect the *public* interest. § But records of the king's courts are only conclusive evidence, generally speaking, against those who are parties to them. Thus, an accessory may controvert the guilt of his principal, notwithstanding the record of such principal's conviction.

Terrars.

9. Ancient terrars are, or are not, evidence, according to the possession from which they come, and the parties by whom, and for whose interest, they are produced. Thus they can only, under very particular circumstances, be evidence *for* the parson, but may generally be evidence *against* him. But if they be signed by churchwardens appointed by the parish at large, and not by the parson, and whose interests were rather *against* him, than *with* him, they become good evidence, even of rights. ||

Maps.

10. Ancient maps, like terrars, surveys, and other such instruments, are subject to similar observations. Their being admitted as evidence must depend on the circumstances under which, and the parties by whom, they were made, the purpose and interest for which they are produced, and the object to be supported by them. **

Corporation and other books.

11. Corporation books, so far as they concern the public government of a town, when publicly kept, and the entries

* Salk. 281.—Peake's Compend. 86. † Peake's Compend. 91.

‡ Cro. Eliz. 227.—3 Black. Com. 333.

§ 10 Co. 92.—Theory of Evi. 43. || Theory of Evi. 44.

** Peake's Compend. 95.

made by a proper officer, are received as evidence of the facts contained in them.* So the daily books of a prison are good evidence as to the time of a Prisoner's discharge, &c. but not of the cause of his commitment.† So the log-book of a man-of-war, to prove when a certain ship became part of her convoy.‡

12. Parish registers are evidence of the entries of births, marriages, &c. therein made, but subject to the proof of the identity of the parties, in the same manner as has been observed respecting the books of the navy-office.§

13. The herald's books are good evidence of pedigree, and such matters; but entries in them taken from records cannot be evidence, because the records themselves (or in cases hereafter to be noticed, copies of them) might be obtained. And, for numerous reasons, inscriptions on monuments and grave-stones, are evidence of the same, subject to the common rules respecting proof of identity.||

14. The sentence of the spiritual court, on a subject within its jurisdiction, is good evidence, as of the lawfulness of marriage.**

15. In criminal cases, depositions are taken by virtue of the statute of 1 & 2 Ph. & Ma. c. 13. and 2 & 3 Ph. & Ma. c. 10. By the former of these, it is enacted, "that those persons who are brought before justices for *felony*, and who are *bailed*; and by the latter, that those who, under similar circumstances, are brought before them and *committed*; shall be examined touching the felony, and their examinations, as well as of those who bring them, shall be put into writing." On these statutes, it has been holden, that in case of felony, if a magistrate take the deposition on oath of *any person in the presence of the prisoner*, whether the party wounded, or an accomplice, and the deponent die before the trial, the depositions may be read in evidence; but, if the prisoner be not present at the examination, it can duly be read as the dying declaration of a

* Peake's Compend. 97.

† Leach, 392.

‡ 1 Esp. R. 427.

§ Peake's Compend. 92.

|| 3 Black. Com. 105.—Theory of Evi. 45.

** Peake's Compend. 45.

person in extremities; for the rule is universal, that where there was no opportunity for cross-examination, a mere *ex-parte* evidence, although on oath, shall not be received as *strictly evidence*.* It is to be observed, too, that these statutes relate only to cases of *felony*, and therefore are not applicable (so as to make *such* depositions evidence) on any other cases.† Thus, on an indictment for a rape, the deposition on oath of the girl taken in writing before a magistrate, and signed by him, but not by her, was, after her death, read in evidence on the trial of the ravisher. ‡

An information before a magistrate, made by the deceased on oath, in the presence of the prosecutor, was given in evidence on the trial, although the deceased was not then apprehensive of death, and did not die till three weeks after. §

But an information, taken before a magistrate, was not allowed to be read in evidence, after the death of the party who gave it, in a prosecution for a *misdemeanour*.||

Depositions before coroners, where the parties were in *extremis*, and have died immediately after, have been received in trials for murder.** But where a pregnant woman died after examination, but before an order of filiation, such examination, taken under the stat. 6 Geo. 2. c. 31. was holden *admissible* evidence, on an application to the quarter session, for an order on the father, and, *uncontradicted*, to be conclusive.†† This, however, it must be observed, was a case not of a criminal proceeding; and under the authority of the statute prescribing the purpose and the authority.

Examination
of a pauper.

But the examination of a pauper, though committed to writing, and taken before two justices, touching his settlement, is not, except in excepted cases, admissible evidence of such settlement, ‡‡ any more than depositions in Chancery and other courts, where, by the course of proceeding, there can be no cross-examination. §§

Of a soldier.

However, by the annual mutiny act, it is made so now,

* Leach, 512.

† Salk. 281.

‡ Leach, 996.

§ Id. 516.

|| 1 Salk. 281.

** Peake's Compend. 63.—Cald. Ca. 482.

†† 2 E. R. 63.

‡‡ See Pract. Expos. *title*, POOR, sect. 2. where most of the cases on the subject are brought together.

§§ E. R. 54.

with respect to soldiers, under certain restrictions, viz. that "if any non-commissioned officer or soldier shall have wife, child, or children, one justice may summon him where he is quartered, to make oath of the place of his last legal settlement, and he shall obey such summons, and make oath accordingly. And the justice shall give an *attested copy* of such affidavit, to be delivered to the commanding officer; which copy shall be evidence as to such settlement, &c. &c." on this statute making so material an inroad on the old determinations respecting evidence, it has been decided that, 1st, there can be only *one* attested copy in each case entitled to this privilege, viz. *that* which is delivered to the commanding officer; * 2dly, that this examination must be authenticated before it can be received in evidence, for it is not one of those instruments which proves itself; † 3dly, that as a *copy* is declared to be evidence, it follows that the *original* examination must be considered such. ‡

And by 59 Geo. 3. c. 12. § 28. "in the case of any person *Of a Prisoner.* having a wife or child, who shall be a Prisoner by warrant of commitment in any gaol or house of correction, or in the custody of any keeper of such, or of any constable or peace-officer, any justice of peace may take his examination on oath in writing, which examination such justice shall sign, and such examination shall be received and admitted in evidence as to such settlement before any justices, as to such settlement, for the purposes of any order of removal, so long as such person shall continue a Prisoner."

16. If a deed be upon the face of it thirty years old or *Ancient deeds.* upwards, it may be given in evidence without proof of the execution of it; but some account of what custody it is produced from, and other circumstances to show the fairness of the exhibition, may be necessary to entitle it to unqualified credit. If there be any erasures, or interlineations, or other circumstances to create doubts, such circumstances must be accounted for, to rebut the presumption of fraud or fabrication. §

17. It may be laid down as a general rule, that as

* 50 T. R. 704.

† 1 E. R. 13.

‡ Pract. Expos. title, Poor, sect. 2.—6 T. R. 534.

§ Bull. N. P. 255.

Copies.

wherever original instruments can be obtained, no inferior evidence of their contents is admissible; so where the record, the contents of which are necessary to be given in evidence, is public property, and cannot be obtained by subpoena, or other process, from the place where it ought always to remain; or where, though private property, it is not produced *by the party possessing it, an attested copy*; or in such sorts of instances as parish registers, bankers' books, and other depositaries where the contents consist of separate entries, and concern different persons, attested *portions of copy*, or extracts of particular entries; are good evidence.*

Stamped instruments.

Before the entire conclusion of what is to be admitted respecting documentary evidence, it is necessary to observe briefly on the production of those instruments as evidence, to the validity of which instruments, for their principal and original purpose, stamps are necessary. To go into a comparison of conflicting cases respecting the admissibility of instruments without having been stamped (which, to give them validity, ought to have stamps), as evidence in suits and prosecutions, would much exceed the prescribed limits, especially as some nice distinctions have been made respecting their admissibility in civil, and in criminal, proceedings.† But it may be laid down as a *general* rule, at least for the purpose of all those instruments that are likely to come in question before a court of session of the peace, that whenever an instrument becomes in any way the direct subject of a prosecution, it cannot be given in evidence, unless it have the proper stamp, because by the stamp acts it can have no validity without them, and is prohibited from being given in evidence;‡ (prosecutions for forgery, indeed, may form an exception to the rule, but they are no part of the business of a session.) Such an instrument, however, being without stamp, or having an improper stamp, is admissible as evidence for collateral purposes. Thus, though in a prosecution for stealing an unstamped instrument, sent in a letter, which, to give it *any value*,

* Peake's Compend. 91.

† 1 Taunt. 102.—2 Leach, 705.

‡ 1 Taunt. 95.—Leach, 1007.

must have a stamp, it could not be produced in evidence against a letter-carrier, to prove the stealing of *the instrument itself*; yet might be produced merely as a piece of paper which can be identified, in order to prove the purloining of the letter.*

A few observations on the subject of evidence, *as connected with both kinds*, parol, and written, must conclude this part of the subject.

Written evidence is considered by the law as of so much higher a nature than *parol testimony*, that the latter is never admitted to contradict the former; never to controul it, but where it is ambiguous; nor to explain it, but where it is contradictory.† Nor can it ever be resorted to, under any circumstances, to supply any deficiency, till all the primary evidence is exhausted.

Parol testimony not to be admitted against written evidence.

And where both exist, and one is merely the transcript of the other as to the same fact, the written alone can be admitted; thus though the declarations of a person mortally wounded respecting his murderers, made upon the approach of death, be admissible from the necessity of the case, if those declarations were reduced to writing by the persons to whom they were made, that writing must be produced, and not the contents of it given *vivâ voce*. Thus also a witness may refresh his memory by reference to any book or paper, but if that book or paper be the foundation of his knowledge, it must be produced, and not the parol testimony of its contents given.‡

Not to the fact contained in the written.

Where written instruments are proved to have been burnt or lost, or where they are in adverse hands and cannot be obtained, parol testimony of their contents is admissible. Thus, where in an appeal against an order of removal, it appeared satisfactorily, that the order of removal and duplicate were *lost*, parol testimony of the existence and contents of such order were determined to be admissible.§

* 3 Bos. & Pul. 316.

† Ibid. 112.

‡ 3 Term R. 749. It has indeed been decided, that though parol testimony of a contract reduced to writing cannot be given, yet that respecting any *collateral* circumstances, *arising out of* such contract, it is admissible. 15 E. R. 456.

§ 6 Term. R. 556.

But when an agreement on unstamped paper had been destroyed, parol evidence of its contents were not allowed to be given, even though it appeared that it had been so destroyed by the wrongful act of the party who took the objection.*

Parol testimony of hand writing necessary.

Parol testimony must, *ex necessitate rei*, be the medium of proof of hand-writing, in subscriptions to instruments and deeds of all kinds; for otherwise, there could be no proof but comparison of signatures, which would not only be more uncertain evidence, but has been decided to be inadmissible.†

Witness giving testimony on different trials as to the same facts.

What a man, who is living, has sworn on one occasion, can never be given in evidence at another to support him, because it can be no evidence of the truth; but if he has at one period sworn any thing, which at another period he has contradicted, such variation may be given in evidence to take off the effect of his testimony; but if a witness examined at a former trial of any issue *between the same parties*, be dead, his depositions on that trial may be read on a subsequent one.‡

Hearsay.

It is a general position in law, that hearsay is no evidence; for if the first speech were without oath, an oath that such a speech was made, does not communicate the validity of an oath to the first bare assertion. To this general position, however, we have seen there is at least one common exception in criminal cases, viz. in that of a person at the point of death from violence, declaring who were his murderers; so there are exceptions, and those not few in number, in civil cases: for there are many on which it is the best evidence that the nature of the case admits. Thus in questions of legitimacy, the declarations of the parents, and others of the family, deceased, corroborating other evidence; in questions of pedigree respecting the identity, residence, names of children, funerals, and other circumstances of relatives, which, at a great distance of time, are often not to be collected from any other source. Also in questions of prescription, as rights of way, the

* *Rippiner v. Wright*, 1 Chit. R. 478.

† 2 Hawk. c. 46.—1 Ld. Raym. 39. ‡ 2 Peere Williams, 546.

declarations of persons deceased who had no interest in the subject, are of material weight to show the general reputation of the country.*

Having thus disposed of the subject of evidence generally, we are come to that period when the Prisoner is to be informed by the Chairman, that, if he has any address to make, it is the proper time so to do; and it is the duty of the justices, and jury, patiently to attend to what he may offer. Prisoner's address.

When the Prisoner hath done, and been heard all that he has to say in his defence, the evidence is summed up by the court to the jury; † and if they cannot agree in their verdict at the bar, a bailiff must be sworn to keep them, thus: Evidence summed up by the chairman.

You shall swear that you shall keep this jury without meat, drink, fire, or candle; you shall suffer none to speak to them, neither shall you speak to them yourself, but only to ask them whether they are agreed: So help you God. ‡

On the subject matter of this oath, which is thus directed to be administered to the bailiff, a few observations present themselves.

The jury must be kept together without meat, drink, fire, or candle, till they are agreed. §

And so it is in all courts, if the jury will not agree on their verdict; to keep them without meat, drink, fire, or candle, till they agree; and the steward of an inferior court may, from time to time, adjourn the court till such agreement. ¶ Jury not to separate before verdict given.

* 1 E. R. 373.

† The Chairman of the session, at least, is inexcusable if he do not take notes of the evidence on every subject of importance which comes before the court. In the events of removal by *certiorari*; of a special case being carried up to the court above; of applications for pardons; and on various other occurrences that may take place, the notes of the Chairman are the only proper record that can be referred to for ascertaining any fact, and the only criterion by which a judgment can be formed of any controverted point.

‡ Dalt. 185.

§ Co. Lit. 227.

¶ Salk. 201. Some relaxation of these rules has occasionally taken place in modern times, but it would be difficult to find any authority for it in the precepts, or the practice, of our predecessors. See next page.

And it is fineable for the jury to eat, though at their own charge, after they are departed from the bar; though it may not avoid the verdict.*

But if any of the jury be ill, on special application to the Court, they may be indulged with meat, drink, or whatever be necessary, at their own cost, or in any way that is not likely to influence their verdict; but it ought not to be at the expence of any of the parties to the trial. †

If the juror continue ill, or die before verdict, the proceedings are as if they had never commenced, and a fresh inquest must be charged to deliver the Prisoner. ‡

But if any of them misbehave themselves after their departure from the bar; as where they do not all keep together, till they have given their verdict, or where any of them carrying any thing eatable with them in their pockets, eat or drink, or otherwise refresh themselves without leave from the court, before they have given their verdict, they shall be punished by fine. §

Relaxation of
those rules.

But in an indictment for a misdemeanour, (conspiracy) which continued more than one day, the jury without the knowledge of defendant, separated all night. A new trial was moved for, on the ground that a jury cannot separate till a verdict has been given, without the consent of the parties, even supposing that such consent would make it lawful, which is doubtful. But *per curiam*, “*Eliz. Canning’s case*, which lasted fifteen days, is decisive. *Howel’s also*, St. Tri. vol. 19, p. 671. In the case of a misdemeanour the dispersion of the jury will not avoid the verdict. The judge may, if he think fit, *forbid the separation*, and if, in contempt of his authority, they separate, he may impose a fine upon them; but whether he consent, or not, the mere fact of separation, unaccompanied by any circumstance of suspicion or impropriety, cannot avoid a verdict.” ||

Additional ex-
amination of
witnesses.

If after their departure they desire to hear one of the

* Bull. N. P. 308.—4 Black. Com. 361. † Dr. & Student, 158.

‡ Ibid.

§ 2 Hawk. c. 22.

|| R. v. Kinnear et al. 1 Chit. R. 462. Note, however, the difference between the case of the dispersion of jurors *pending the proceedings*, and that of their dispersing *after* the Court has summed up the evidence and given the charge, before they shall have returned a verdict.

witnesses again, it shall be granted, so he deliver his testimony in open court; and also they may desire to propound questions to the court, for their satisfaction, and it shall be granted, so it be in open court. *

If the jury say they are not agreed, the court may examine them individually; and if in truth they are not agreed, they are fineable; † but a jury sworn and charged in a capital case cannot be discharged (without the Prisoner's consent) till they have given a verdict; and that must be given also openly in court. ‡

As to trials going off for want of jurors, by means of drawing a juror, it seems, 1st, That in capital cases a juror cannot be withdrawn, though all parties consent to it. 2dly, That in criminal cases not capital, a juror may be withdrawn, if both parties consent, but not otherwise. 3dly, That in all civil causes a juror cannot be withdrawn, but by consent of parties. §

After the verdict is recorded, the jury cannot vary from it, but before it be recorded, they may vary from the first offer of their verdict; and this is not unfrequently done at the suggestion of the court, where it appears that the jury have misapprehended any fact, or the legal import, or application to the subject-matter, of any evidence. That verdict which is recorded shall stand. || But they may give a special verdict in any criminal case, whether capital, or not capital, as well as in a civil. As if one be indicted for grand larceny, that is for stealing goods above the value of 12*d.* yet the jury may find specially that he is guilty, but that the goods are not above the value of 12*d.* in which case he shall only have judgment for petit larceny.

The effect of a special verdict is, that it finds the mere fact, and leaves the legal effect of such verdict to the judgment of the court. A verdict of this description however must find all the circumstances constituting the offence, for the court cannot supply them by reference or implication.

* 2 Hale, 296.

† 2 Hawk. c. 47.—Fost. C. L. 22.

‡ Co. Lit. 227.

† Ibid.

§ Carthew's R. 463.

Thus, it must find (except in cases excepted by statute) that the fact was committed in the counts laid in the indictment, or no judgment can be given.* It is sufficient, however, if all the substantial requisites be found, which go to constitute the offence charged, though it do not exactly correspond with the indictment. †

But the offence found by the verdict must be of the same kind, though it may vary in degree, as that laid in the indictment, or no judgment can be pronounced. As a man indicted for a misdemeanour cannot be found guilty of facts that necessarily constitute a felony, or *vice versa*; at least if it be so, no judgment can be given. This however does not amount to an acquittal of the Prisoner, and he may be indicted again. ‡

At the assizes it is common, instead of a special verdict, to find a general verdict of guilty, but to have a special case reserved by the court on the point of law, for the consideration of the judges; but this practice cannot take place at sessions, because the judges will not take cognizance of a case reserved upon an indictment *there*. §

Cannot cast
lots for verdict.

If the jurors differ, and cast lots for their verdict, although it may be according to the evidence, and the opinion of the Court, they shall be fined for the contempt. || But the court cannot receive an affidavit from any of the jurymen, that the jury were divided in opinion, and tossed up, in all of whom such conduct would be a very high misdemeanour; but, in every such case, the court must derive their knowledge from some other source; as from some persons having seen the transaction through a window, or by some such other means. **

Jurors when
punishable for
other con-
tempt's.

Jurors are likewise punishable for sending for, or receiving instructions from, the parties, concerning the matter in question, and therefore much more for receiving a bribe.

So if a jurymen have a piece of evidence in his pocket, and after the jury sworn and gone together, he sheweth it

* 2 Str. 1015.—Lamb. 406.

† 1 Str. 19.—2 Hawk. 47.

‡ 2 Str. 1113.—1 Leach, 12.—2 Str. 1019.—2 Ld. Raym. 1586.

§ 15 E. R. 330.

|| 1 Str. 642.

** 1 T. R. 11.

to them to influence their verdict, it is a misdemeanour fineable in the jury; but it avoids not the verdict. *

But it is no offence in a juror merely to exhort his companions to join him in such a verdict as he thinks right; and generally, it seems certain, that no one is liable to any prosecution or punishment whatsoever, in respect of any verdict given by him in a criminal matter, adhering only to these plain rules, of justice and decency. For since the safety of the innocent, and punishment of the guilty, so much depend upon the fair and upright proceedings of jurors, it is of the utmost consequence that they should be as little as possible under the influence of any passion whatsoever; and therefore, lest they should be biassed with the fear of being harassed by a vexatious suit, for acting according to their conscience, the law will not leave any possibility for a prosecution.†

When the jury are agreed on the verdict, the clerk calls them by their names, and asks them "if they are agreed in their verdict, and who shall say for them?" and calls the first Prisoner to the bar, and bids him hold up his hand. Then says to the jury, "Look upon the Prisoner, you that are sworn, what say you, is A. B. guilty of the felony whereof he stands indicted, or not guilty?" If they say *Guilty*, then the clerk asks them, "what lands or tenements, goods or chattels, he, the Prisoner, had at the time of the felony committed, or at any time since?" The jury's common answer is, "None to our knowledge." When the jury say, "*Not guilty*," then the clerk asks if he, the Prisoner, "did fly for it, or not?" If they find a flight, it is recorded; but their common answer is, "Not to our knowledge."

And so the clerk proceeds to every Prisoner particularly, which the jury hath in charge, writing after the words *po. se.* over the several names of the Prisoners, *guilty*, or *not guilty*, as the verdict is; and then says to the jury, "Hearken to your verdict as the court recordeth it; you say A. B. is guilty of the felony whereof he stands indicted,

* 2 Hale, 306.

† 2 Hawk. 22.

and that he hath no goods nor chattels; that C. D. is not guilty," and so of the rest; and then concludes, "and so you say all."

In all cases of felony the verdict must be given in open court, and in the presence of the Prisoner.* In misdemeanours of importance to the public, the same solemnity is always observed; but in those of inferior import, and where only individuals are affected, it is common enough to return a verdict otherwise than in open court, and even in the absence of the defendant. †

Such as have been found guilty by the jury, are called upon to say why judgment should not be passed upon them. They may now, therefore, if any errors appear upon the face of the words, (for to that species of error alone the privilege is confined,) ‡ move the court to arrest or stay the judgment; § but, as this is not an ordinary procedure of sessions, we will pass on to that which commonly occurs, viz. that the offender against whom a verdict has passed, offers something to the court in extenuation of his crime.

Arrest of judgment.
Address in extenuation of offence.

Adjournment of judgment.

If he offer nothing, or if what he do offer make no impression on the court, either in arrest or stay of judgment, or in mitigation of punishment, sentence is generally passed immediately. If, on the contrary, any doubt arise in the breasts of the court respecting the application of the law to the facts, or they wish to have time for examination into the circumstances of the offence, or the character of the offender, it is usual to adjourn the session to a future day, in order to give time for consultation, discussion, or inquiry, as the case may require. || In this event, the manner of disposing of the defendant, during the interval, will depend on the nature of the offence of which he has been convicted, and the situation in which the course of the proceedings, previous to trial, may have placed him. If in custody, he will be recommit-
ted to custody; if out on bail, he will, generally, be allowed to enter into a new recognizance to appear at the period of adjournment, to receive judgment. It is scarcely necessary

* Co. Lit. 227.—4 Black. Com. 360.

† 5 Burr. R. 2667.

‡ 4 Burr. R. 2287 —1 Leach, 101.

§ 4 Black. Com. 375.—2 Hawk. c. 48.

|| See *post*, Ch. 6.

to add, that this delay of sentence being a forbearance in favour of the prisoner, whether it be in compliance with his solicitation, or emanate immediately from the court, it would not be compatible with the claims of justice to place the security of his person for receiving the judgment of the law upon a more precarious foundation *after* verdict, than it was *before*; and therefore that, in the circumstances under contemplation, some deference is due to the application of the prosecutor, as well as to the opinion of the court, respecting the recognizances by which the liberation of his person may be justified.

At whatever period the judgment of the court is to be given, proclamation is to be made three times, as follows, by the crier of the court. Proclamation
to keep silence.

“ O yez, O yez, all manner of persons are commanded to keep silence whilst judgment is given against the prisoner at the bar, upon pain of imprisonment.” Then the prisoner is placed at the bar, and the sentence * is pronounced by the chairman. Sentence
passed.

* In a book professedly compiled principally for the use of persons who have not been in the habit of considering such kinds of subjects, it may, perhaps, be deemed at least a pardonable piece of presumption in its author, if he throw out a few suggestions on that portion of the justice's public duty, in the exercise of which, the law has left the *most* to his *discretion*, with the *fewest* means of regulating his *judgment*, viz. the punishment of those offences which are the usual subjects of trials before a court of quarter session. Where statutes have conferred upon individual magistrates, or even upon sessions, the authority of summary convictions, without the intervention of jurors, they have limited the penalties for the offences created, or punished, by them, within *narrow generally*, but *always* within *prescribed* bounds; while, with respect to fines, imprisonment, and even transportation, they have, of necessity, perhaps, left to them the same latitude of apportionment, as to the judges of the superior courts, although frequently persons without the same professional experience, the same familiar acquaintance with the multiplied inducements to the commission of crimes, or the same means of discrimination respecting the effects of punishment. The present purpose is, therefore, to impress upon the minds of those who are only commencing their career in the public duties of magistracy, not merely the justice and humanity, and therefore the duty, but even the policy also, of exercising the most unprejudiced and temperate discrimination in the

In trials for misdemeanours, indeed, less formality is observed respecting the proclamations, &c. but the essential parts of the proceedings are the same. The jury are charged by the chairman; *they* return their verdicts, and *he* passes the sentence of the law, whatever it may be (generally fine and imprisonment, or one of them), in a similar manner.

Judgments.

This stage of the proceedings brings us to a more particular consideration of the various judgments themselves, which are ordinarily inflicted by courts of session of the peace.

distribution of punishments, on account of the salutary consequences which may reasonably be expected from it. The punishments ordained by municipal regulations, may not improperly be designated by the epithets "admonitory," "exemplary," and "vindictive." To discriminate further than this might perhaps incur the imputation of fanciful refinement, but thus far it may not be too much to insist. The first suggestions of common sense, and common benevolence, need not wait for the sanction of experiment, for they are to be found in the very rudiments of civilization. To the novice in delinquency, punishment is intended primarily to operate as an individual admonition; and where the heart has not been absolutely depraved, but only the passions excited, or the temerity of youth stimulated by excessive temptation, or the influence of bad example, it will frequently have its due effect, if administered with that moderation, which corrects, without degrading. *Nemo repente turpissimus*, is an adage, as true in point of fact, as necessary to be kept in mind by those, whose rank and duties call upon them to mark with precision of punishment, the deviation of ignorance and frailty from the path of rectitude. On a repetition of offences, where it is ascertained, indeed, that admonition has failed to correct, to deter, by making the culprit an example, becomes a duty to society: for compassion to the individual may then well give way to the general protection of the social system. Nevertheless, till amendment has become entirely hopeless, the severity of punishment should be short of that which cuts off all retreat from an association with the vicious. The third, and last, stage of depravity is that alone in which moderation may cease to be considered as an attribute of justice. In that extremity, society has an ample right to manifest its resentment; and the administrators of its laws are justified in becoming the ministers of its wrath; because cutting off (by removal or disgrace) the morbid member from the general body, becomes the only method of preventing the communication of contagion.

It is to be collected, from many parts of the preceding pages, that for misdemeanours of all kinds, as well those of ^{In misdemeanours.} common law, as by statutes, fines and imprisonment, either separately, or conjointly, are the usual punishments; by the common law and by some statutes, to be inflicted, at the discretion of the courts before whom the trial shall take place; by other statutes subject to certain limitations therein respectively specified. The *place* of imprisonment is now always in some house of correction, or gaol, of the county wherein the offender has been convicted.* In former times, this imprisonment was frequently directed to be partly in stocks, or in pillory. The former of these modes is fallen into disuse (except in some instances of summary convictions before magistrates out of court, where it is not only the *specific*, but the *only* punishment directed by statute), and the latter is recently abrogated,† except in instances of perjury, and subornation thereof. Of specific imprisonments by statute it is not necessary to advance any thing; but of those which are said to be discretionary, it may be right to observe, that the discretion intended is not an arbitrary and capricious discretion, but measured by the nature of the offence; the sex, age, and other circumstances of the offender; and the balance of public benefit to be derived from the exposure of the criminal, and the notoriety of his punishment; or from the silence dictated by decency respecting the nature of the offence, and contemptuous ob-
 : ligation of the offender. When the crime is of a description
 : to threaten the public peace with disorder, as in the case of
 : aggravated assaults, riots, libels, and such like offences; or
 : the public morals with subversion, as in that of keeping a
 : house of ill fame; it is usual to add, to fine and imprison-
 : ment, a requisition of sureties for the future good behaviour
 : of the offender, for a longer, or a shorter period, in pro-

* Imprisonment in penitentiary houses, or in hulks, as a commutation for transportation, and *that* not by the judgment of the courts, but by the authority of the government, is not within our present contemplation.

† 56 Geo. 2. c. 133.

portion to the apparent danger of repetition, and the contrition of the party.

In felonies. The inferior species of felonies, such as are ordinarily tried at sessions of the peace, are, by a numerous succession of statutes,* made punishable by fine, imprisonment, and whipping; or by one, or more of them; or by transportation for seven years.

Transportation. A few words on the subject of transportation shall close this chapter.

Transportation was unknown to the common law, and introduced by statute only, about the end of Queen Elizabeth's reign, and continued for the purpose of colonizing newly discovered or conquered settlements. It is now confined to three cases, 1st, voluntary, under a stat. of Geo. 1. 2ndly, by way of commutation, to escape a more severe punishment, and therefore, *to a certain degree*, voluntary; 3dly, by force of some modern statute, as a specific punishment of some particular offence. **Voluntary.** Voluntary transportation is, "where any person of the age of fifteen years and under twenty-one, shall be willing to be transported, and enter into any service in any of his Majesty's plantations in America, it shall be lawful for any merchant, or other, to contract with him for such service, not exceeding eight years; provided such person binding himself, come before the Lord Mayor of London, or some other justice of the city, if such contract be made there, or before two justices of peace of the place where such contract shall be made, and acknowledge his consent, and sign such contract in their presence, and with their approbation; and such merchant or other may transport such person, and keep him in any of the plantations, according to such contract; which contract and approbation of such magistrate shall be certified by such magistrate at the next quarter session, to be registered by the clerk of the peace, without fee."†

As a commutation in offences within clergy. Transportation, as a commutation for a more severe punishment is, "where any person shall be convicted of grand

* 4 Geo. 1. c. 11.—6 Geo. 1. c. 23.—19 Geo. 3. c. 74.

† 4 Geo. 1. c. 11.

or petit larceny, or feloniously stealing of money or goods, and who by law shall be entitled to the benefit of clergy, and liable only to burning in the hand or whipping (except persons convicted for receiving or buying stolen goods, knowing them to be stolen), it shall be lawful for the court before whom they were convicted, or any court held at the same place with like authority, (or any subsequent court, held with like authority, for the same county, &c. though held at another place,) instead of ordering such offenders to be burnt in the hand or whipped, to order that they be sent to *some of his Majesty's plantations in America for seven years*, and such court shall have power to transfer such offenders, by order of court, to the use of any person and their assigns who shall contract for their performance of such transportation for seven years. And where any persons shall be convicted of any crimes, for which they are excluded the benefit of clergy, and his Majesty shall extend mercy to such offenders on condition of transportation, and, such intention of mercy be signified by one of the principal secretaries of state, it shall be lawful for any court, having proper authority, to allow such offenders the benefit of a pardon, and to order the like transfer to any person (who will contract for such transportation) and to his assigns, of any such offenders, *as also of any person convicted of receiving stolen goods, knowing them to be stolen*, for fourteen years, if such condition of transportation be general, or else for such other term as shall be made part of such condition; and the persons contracting or their assigns, shall, by virtue of such order of transfer, have a property in the service of such offenders for such term of years."*

For offences
excluded
clergy.

These provisions have been amended by many subsequent statutes, but this of Geo. 1. remains the foundation of all modern transportation. The first of these amendments was

* 4 Geo. 1. c. 11. and 3 Geo. 3. c. 23; which act, last referred to, was, by the 24 Geo. 2. c. 56. altered and amended, in many particulars, especially in protecting the persons conveying the transports to the port of embarkation, in allowing a property in their service, to be assigned to contractors for them, without giving security for transportation, &c.

by a stat. passed soon after* the accession of the King, by which the time of transportation was accelerated, after reprieves, in cases of felonies excluded the benefit of clergy, by judges of the assize.

By another, passed after no great interval of time, those parts of the former statutes which ordained transportation to America to be *part* of the sentence of transportation, were superseded by a provision, that the sentences in future might be, "*to some part of his Majesty's dominions beyond the seas,*" generally, and not confined to the American plantations, many of which were no longer under the controul of Great Britain:† so that now the usual style of the sentence of transportation runs, "*to such of his Majesty's dominions beyond the seas, as he shall direct and appoint.*"

Next, it was enacted, that hard labour in certain places of confinement, might in some cases be subsequently to sentence substituted for transportation, and many statutes have been successively enacted to regulate these receptacles.‡ These, however, not entering into the consideration of the courts, and not controuling the sentences, are beside our purpose here.

Several statutes have been recently passed § for correcting the errors, and enlarging the benefits, of many of the former ones, on the subject of transportation, and the temporary confinement of offenders, of which the substance, so far as is necessary for our immediate purpose, is as follows:—The first of these, after reciting an act of the 43 of Geo. 3. on the same subject, provides for the tonnage and admeasurement of all vessels carrying passengers to any of his Majesty's plantations and settlements abroad. The next, after reciting those of 19 Geo. 3. c. 74.—24 Geo. 3. c. 56. and noticing others which had been, from time to time, made to

* 8 Geo. 3. c. 15.

† 19 Geo. 3. c. 74.—enlarged and extended by 35 Geo. 3. c. 18. and 39 Geo. 3. c. 45.

‡ 15 Geo. 3. c. 74.—24 Geo. 3. c. 56.—31 Geo. 3. c. 46.—52 Geo. 3. c. 44.—56 Geo. 3. c. 63.—and 59 Geo. 3. c. 136.

§ 53 Geo. 3. c. 36.—53 Geo. 3. c. 39.—64 Geo. 3. c. 30.—55 Geo. 3. c. 156.—56 Geo. 3. c. 27.—56 Geo. 3. c. 119. and 59 Geo. 3. c. 101.

amend and continue these, for the transportation of offenders, as well as for the confinement of them in places appropriated for these purposes, continues them to March 25, 1814. The last mentioned further continues the act immediately preceding, till March 25, 1815, and the conclusion of the then next session of parliament.

Thus stood the statutes respecting the transportation of offenders in 1815. By the 55 of Geo. 3. c. 156, the 24 Geo. 3. c. 156, was repealed; and it is enacted, that his Majesty, with the advice of his privy council, may appoint any other places beyond the seas, in addition to those heretofore appointed, either within, or without, his Majesty's dominions, for the transportation of offenders. Persons undertaking to transport them are to give security for faithfully transporting, and produce evidence of the landing of the persons transported; and justices are to be appointed by courts to contract. This act, being for a limited term, was re-enacted by 56 Geo. 3. c. 29. which continues all the provisions of it, as well as of 25 Geo. 3. c. 46. respecting the removal of offenders to temporary places of confinement (further continued by the subsequent acts already noticed), till August 1, 1821. The last statute on this subject is 59 Geo. 3. c. 101, which recites the last-mentioned statute of 56 Geo. 3. and enacts, in addition to the provision of it, that convicts adjudged by courts *out of* England to transportation, and convicts pardoned on condition of transportation, may, when *brought to England*, be imprisoned on board of ships provided for that purpose, till they can be transported, or till the term of their respective sentences shall expire. But not to extend to convicts in Scotland or Ireland. To continue in force till the same period as the recited act, viz. May 1, 1821.

The sentence of the law being the concluding act of that part of the duty of a session of the peace, which has been the subject matter of this chapter, all ulterior proceedings are properly referable to another portion of the work.*

It may not, however, be irrelevant to add, that "any

Convicts, &c.
to be conveyed
by passes.

* *Post*, Chap. 6.

judge of assize, or justices in session, or any justice of the peace, may order *any convict* upon his discharge from prison, and also *any person who shall be acquitted* at the assizes or sessions, *discharged by proclamation or otherwise*, to be conveyed by a vagrant pass, as directed by 17 Geo. 2, who shall by himself, or any other person, apply to such court, or justice, to be so conveyed; and the judge, justices, or justice, aforesaid, shall certify in such pass, that the person so conveyed was discharged from prison, or acquitted, or otherwise discharged, at the assizes or sessions, as the case may be, for which pass no fee shall be paid." *

* 32 Geo. 3. c. 45. s. 4.

PRECEDENTS

OF

INDICTMENTS.*

ASSAULTS.

THE commencement common to all indictments is after the following, or the like, form.

County of..... (to wit). of the parish of	}	The jurors for our Lord the King upon their oath present that A. B. late in the county of.....labourer (or	Commence- ment.
---	---	--	--------------------

* The extreme improbability that any selection of precedents which the Compiler of this volume might make, would exactly meet the judgment, or the wants, of every professional person into whose hands it might chance to fall, renders it less necessary that he should attempt to give any explanation of the course he has actually pursued. Duty and interest, however, equally concur in pointing out the necessity for observing, that, in the choice he has made, he was solely influenced by that design which has guided his discretion through the whole of his work ; viz. that of making it most generally useful on all *ordinary* occasions, to persons at a distance from the sources of the highest professional information and assistance. With this object in view, he offers, with but very few exceptions, little more than precedents of indictments for offences which usually are, or may be, preferred to the courts of quarter sessions of the peace all over the kingdom ; purposely excluding most of those adapted to cases which are not within their ordinary jurisdiction, or which require more recondite legal erudition. He is, moreover, entitled to observe, that he has selected only such as have received judicial, or, at least, high professional, approbation. Indeed a large portion has been kindly supplied by a gentleman heretofore of great eminence at the bar, and now filling a judicial situation with the highest respect.

as he is, giving the proper addition), on the day of in the year of the reign of our Sovereign Lord George the Third, by the grace of God, of the united kingdom of Great Britain and Ireland, King, Defender of the Faith, &c. with force and arms at the parish of aforesaid, in the county of aforesaid, did, &c. &c.

Offence.

(Here state the offence.)

Other counts.

If the offence is to be laid in different ways, every subsequent count begins, "And the jurors aforesaid, upon their oaths aforesaid, do further present, &c. &c."

Conclusion at Common law.

The common conclusion of all indictments for offences at common law is, "In contempt of our said Lord the King and his laws, to the evil example of all others in the like case offending, and against the peace of our said Lord the King, his crown and dignity."

Ditto by statute.

When the offence is created, punished, or the proceedings against regulated, by statute, the conclusion must further state, "Against the form of the statute (or statutes, as the case is) in such case made and provided."

After the insertion of these technical formalities, common to all indictments, a repetition of them in individual instances would be superfluous; with the exception, therefore, of the first, the following precedents exhibit only the material parts, or substantial charges, in the body of each particular indictment, with such additions as particular circumstances may render necessary.

For a common assault.

*County of { The jurors of our Lord the King
(to wit.) { upon their oath, present that A. B., late
of the parish of in the county of yeoman, on
the day of in the year of the reign of
our Sovereign Lord George the Third, &c. with force and
arms at the parish of in the county aforesaid, in and
upon one P. Q. in the peace of God and our said Lord the
King, then and there being, did make an assault: and him
the said P. Q. then and there did beat, wound, and ill treat,
so that his life was greatly despaired of, and other wrongs to*

the said P. Q. then and there did, to the great damage of the said P. Q. and against the peace of our said the King, his crown, and dignity."*

County of { That B. B. late of, &c. labourer, being *For an assault, and beating out an eye.*
(to wit.) { a person of a wicked and malicious disposition, on, &c. with force and arms, at, &c. aforesaid, in and upon M., the wife of T. W., violently did make an assault, (she the said M. in the peace of God and our said Lord the King then and there being,) and her the said M. then and there did beat, wound, and ill treat, so that her life was greatly despaired of; and that he the said B. B. with his right hand the said M., in and upon the right eye of her the said M. then and there unlawfully, violently, and maliciously did strike, by means whereof the said M. then and there, the use, sight, and benefit of her said right eye entirely lost, and was deprived of, and also by means of the premises she the said M. became sick, weak, languid, and distempered, and remained so sick, weak, languid, and distempered for a long time, to wit, from thence until the day of taking this inquisition, and other wrongs to the said M. then and there violently and maliciously did, to the great damage and impoverishment of the said T. W. and M. his wife, to the evil example, &c. and against the peace, &c.
[Add a count for a common assault, according to the form of the preceding indictment.]

County of { The jurors, &c. that A. B. late of the *Assault and false imprisonment until a promissory note given.*
(to wit.) { parish of C. in the county of M. labourer, on the day of in the year of the reign of our Sovereign Lord George the of the united kingdom of Great Britain, &c. with force and arms at the parish aforesaid, in the county aforesaid, in and upon one

* The words inserted in Italics are not necessarily constituent parts of indictments for assaults, but are generally introduced, and may be so introduced, or omitted, as occasion may render proper.

D. E. in the peace of God and our said Lord the King then and there being, did make an assault, and him the said D. E. then and there did beat, wound, and ill treat, so that his life was greatly despaired of; and that he the said A. B. him the said D. E. then and there with force and arms falsely, unlawfully, and injuriously, and against the will of the said D. E. and against the laws of this realm, without any legal warrant, authority, or justifiable cause, did imprison and detain in the dwelling-house of one F. G. there situate for the space of hours and upwards, and until the said D. E., in order to be released from the said imprisonment, did sign and deliver to the said A. B. a promissory note under his hand, whereby he the said D. E. promised to pay unto the said A. B. six months after the date thereof, the sum of 20*l.* for value received; whereas that he the said D. E. has received no valuable consideration for the said promissory note; and other wrongs to him the said D. E. he the said A. B. then and there unlawfully and injuriously did, to the great damage of the said D. E. and against the peace of our said Lord the King, his crown, and dignity. [*Add another count for a common assault.*]

A violent assault upon a woman big with child, whereby she was delivered of a dead child.

County of { The jurors, &c. that A. B., late of the
(*to wit.*) { parish of C., in the county of M., yeoman, being a person of a wicked and diabolical mind and disposition, on the day of in the year of the reign of our Sovereign Lord George, &c. &c. with force and arms at the parish aforesaid, in the county aforesaid, that is to say, in the dwelling-house of one D. E. there situate, in and upon F., the wife of the said D. E., she being then big with child, and in the peace of God and our said Lord the King, unlawfully, violently, and injuriously did make an assault, her the said F. then and there did beat, wound, and ill treat; that he the said A. B. with a certain wooden table, called a card-table, which he the said A. B. then and there lifted up in both his hands, her the said F. in and upon the belly and stomach of her the said F. then and there unlawfully, violently, and injuriously did several times strike and beat,

thereby giving the said F. in and upon her said belly and stomach several grievous and dangerous bruises, by reason and means of which said striking and beating of her the said F. as aforesaid, and the bruises she the said F. received thereby, she the said F. afterwards, to wit, on the of in the same year, at the parish aforesaid, in the county aforesaid, was delivered of a dead child, the same being the same child with which she was so big as aforesaid, and was then and there brought into expense, peril, and danger of her life; and other wrongs to her the said F. he the said A. B. then and there unlawfully, violently, and injuriously did, to the evil, &c. and against the peace of our said Lord the King, his crown, and dignity. *[Add another count for a common assault.]*

County of..... { The jurors, &c. that A. B. late of the For challeng-
(to wit.) { parish of C., in the county of M., yeo- ing a person,
man, being a person of a wicked and turbulent temper and at the same
disposition, and unlawfully, wickedly, and maliciously de- time holding a
vising and intending to disturb, molest, and disquiet C. D., drawn sword.
gentleman, the said C. D. being a person of good name,
fame, credit, character, and reputation, and a man of a quiet
and peaceable temper and disposition, and to instigate, ex-
cite, move and provoke the said C. D. to fight a duel with
him the said A. B.; that he the said A. B. might thereby
kill and murder him the said C. D., and to cause and pro-
cure the said C. D. to break the peace of our said Lord the
King, he the said A. B. in order to complete, perfect, and
bring to effect his said wicked and unlawful purposes, on the
.....day of in the year of the reign of our
Sovereign Lord George the now King of Great Bri-
tain, and with force and arms at the parish aforesaid, in the
county aforesaid, then and there having and holding a
drawn sword in his right hand,* unlawfully, openly, wick-
edly, and maliciously, without any just cause or provocation

* The hand, or weapon of any kind, held in a menacing manner, constitutes an assault.

whatsoever, did challenge, and, as much as in him lay, endeavour to move, incite, instigate, and provoke the said C. D. to fight a duel with him the said A. B., by reason whereof he the said C. D. was then and there put under great fear and danger of losing his life, and other wrongs to him the said C. D. he the said A. B. then and there unlawfully, wickedly, and maliciously did, to the great damage of him the said C. D.; in contempt of our said Lord the King and his laws, to the evil and pernicious example of all others in the like case offending, and against the peace, &c. [*Add another count for a common assault.*]

For taking a
gun from a
person, and
using threats,
&c.

County of { That A. B., late of the parish of C., in
(to wit.) { the county of yeoman, being a
person of a wicked and diabolical mind, and often unruly
and turbulent disposition, on the day of in the
. year of the reign of our Sovereign Lord George the
Third, &c. with force and arms at the parish aforesaid, in
the county aforesaid, in and upon one C. D., in the peace of
God and the said Lord the King then and there being, un-
lawfully, violently, wickedly, and maliciously did make an
assault, and him the said C. D. then and there did beat,
wound, and ill treat, so that his life was greatly despaired of.
And that he the said A. B. with great force and violence
then and there unlawfully seized and laid hold of a certain
gun, which he the said C. D. in his right hand then and
there had and held, and the said gun from him the said
C. D. did then and there unlawfully, and in a forcible man-
ner, take away; and the said gun being then and there
charged with gunpowder and leaden shot, the said A. B.
with force and arms to, at, and against the said C. D. did
point, direct, and level, and did wickedly and maliciously
threaten to shoot off and discharge; and other wrongs to
him the said C. D. he the said A. B. then and there vio-
lently, wickedly, and maliciously did; to the great danger,
terror, and affrightment of him the said C. D.; to the evil
example of all others in the like case offending, and against
the peace, &c. [*Another count for a common assault.*]

County of { That T. R., late of, &c. on, &c. with For an assault, and encouraging a dog to bite.
(to wit.) { force and arms, at, &c. aforesaid, did unlawfully incite, provoke, and encourage a certain dog, called a mastiff, of and belonging to the said T. R. to bite him the said A. B., by means whereof the same dog did then and there grievously bite the said A. B. in and upon the right leg of him the said A. B., and the said leg of him the said A. B. was thereby then and there grievously hurt, wounded, and lacerated, to the great damage of the said A. B., and against the peace, &c.

County of { That J. T., late of, &c. gentleman, For an assault by two persons, one of whom horse-whipped the prosecutor.
(to wit.) { and B. P., late of, &c. esquire, being persons of wicked minds and malicious dispositions, and not regarding the laws of this kingdom, and having conceived great malice, hatred, and ill will towards R. E., on, &c. with force and arms, at the parish aforesaid, in the county aforesaid, unlawfully and maliciously did make an assault upon the said R. E. then and there being in the peace of God, and our said Lord the King, and that the said J. T., by the procurement and instigation of the said B. P., with a certain large horsewhip, which he the said J. T. in his right hand then and there had and held, and also with the fists of him the said J. T. then and there unlawfully, maliciously, and violently did strike and beat him the said R. E. in and upon the head, face, back, and arms of the said R. E., and giving to him the said R. E. then and there by such striking and beating of him the said R. E. with the horsewhip aforesaid, and also with the fists of the said J. T. divers severe and dangerous cuts, strokes, bruises, and blows in and upon the head, face, back, and arms of him the said R. E., by means whereof the said R. E. was then and there grievously hurt and injured; and the said J. T. and B. P. then and there unlawfully and maliciously did other wrongs to the said R. E., in contempt, &c. and against the peace of, &c.

For an assault
by driving a
stage coach
against prose-
cutor's chaise.

County of { That O. M., late of, &c. coachman,
(to wit.) { being a person of a wicked, cruel, and
malicious mind and disposition, on, &c. with force and
arms, at, &c. in the King's highway there, unlawfully did
assault D. M. the wife of W. M. and A. M. their daughter,
then and there respectively being in the peace of God and
our said Lord the King, in a certain carriage, called a one-
horse-chaise, then and there drawn by one gelding, lawfully
and peaceably passing and travelling in the highway afore-
said, and that the said O. M. then and there driving four
horses, then and there drawing a certain stage coach in the
highway aforesaid, then and there unlawfully, wilfully, fu-
riously, and maliciously did drive the said four horses and
coach towards and against the said carriage, called a one-
horse-chaise, so passing in the highway aforesaid, and that
the said O. M. by such driving of the said four horses and
coach as aforesaid, then and there unlawfully, wilfully, fu-
riously, and maliciously did overturn, break, damage, and
spoil the said carriage, called a one-horse-chaise, and there-
by forced and threw the said D. M. the wife of the said W. M.
and A. M. from and out of the said last-mentioned carriage,
into and upon the highway aforesaid, and by means whereof
the said D. M. the wife of the said W. M. and A. M. were
then and there severally and respectively grievously hurt,
bruised, and wounded, and were put in great danger of
losing their lives; and the said O. M. then and there un-
lawfully, wilfully, and maliciously did other wrongs to the
said D. M. the wife of the said W. M. and A. M. to the
great damage of the said, &c. in contempt, &c. to the evil
example, &c. and against the peace, &c. And the jurors,
&c. do further present, that the said O. M. being such per-
son as aforesaid, afterwards, that is to say, on, &c. with force
and arms, in, &c. aforesaid, in the highway there, unlaw-
fully, wilfully, and furiously did drive four horses then and
there drawing a certain stage coach, under the care and
guidance of him the said O. M. in the highway aforesaid,
towards and against a certain one-horse-chaise, then and
there drawn by one gelding in the highway aforesaid,
wherein the said D. M. the wife of the said W. M. and A.

Second count

M. were then and there severally and respectively passing and travelling in the highway aforesaid, and that the said O. M. by such driving of the said four horses, so drawing the said coach as last aforesaid, then and there unlawfully, wilfully, and maliciously did overturn, break, damage, and spoil the said carriage, called a one-horse-chaise, and forced and threw the said D. M. the wife of W. M. and A. M. from and out of the said last-mentioned one-horse-chaise, into and upon the highway aforesaid, by means whereof the said D. M. the wife of the said W. M. and A. M. were severally and respectively grievously hurt, bruised, and wounded, and were put in great danger of losing their lives; and the said O. M. then and there unlawfully, wilfully, and maliciously did other wrongs to the said D. M. the wife of the said W. M. and A. M., to the great damage of the said, &c. [*as before,*] in contempt. &c. [*Third count for a common assault, as ante.*]

County of { That one J. R., late of &c. For an assault
(*to wit.*) { labourer, being a person of a malicious on a chaise
disposition, &c. on the day of, &c. with force driver, and
and arms, at, &c. on the King's highway, there, in and upon overturning a
one R. O., in the peace of God, and our said Lord the King, chaise with a
and in a certain chaise drawn by two horses, then and there cart.
being, did make an assault, and that the said J. R. then and
there driving one horse, drawing a cart, did then and there,
in the highway aforesaid, unlawfully, maliciously, and vio-
lently drive and force the said horse, so as aforesaid drawing
the said cart, to and against the said chaise, and by such driv-
ing and forcing did then and there, in the highway aforesaid,
unlawfully and maliciously thrust, force, and impel the said
cart against the said chaise, and he the said J. R. with the
off-wheel of the said cart did then and there, in the high-
way aforesaid, unlawfully and maliciously overturn the said
chaise, in which the said R. O. then and there was as afore-
said, by means of which overturning of the chaise aforesaid,
he the said R. O. then and there was grievously hurt,
bruised, and wounded; and other wrongs, &c. [*Second
count for a common assault, as ante.*]

For assaulting
one of the col-
lectors of a
turnpike in the
execution of
his office.

County of { That A. Z., late of the parish of
(to wit.) { in the county of labourer, on the
. day of in the year, &c. in and upon
one B. O. then and there being a collector and receiver of
the monies payable, by virtue of a certain act of parliament,
made in the thirteenth year of the reign of his present ma-
jesty King George the Third, intituled "An act to explain,
amend, and reduce into one act of parliament, the general
laws now in being for regulating the turnpike roads in that
part of Great Britain called England; and for other pur-
poses;" and in the peace of God and our said Lord the
now King, and in the execution of his said office* then and
there also being, did make an assault, and him the said B. O.
then and there did beat, wound, and ill treat, so that his
life was greatly despaired of, and other wrongs, &c. against
the peace, &c. [*Second count for a common assault.*]

For assaulting
a constable in
the execution
of his office.

County of { That A. B., late of, &c. on, &c. with
(to wit.) { force and arms, at, &c. aforesaid, in and
upon one R. W. (then being one of the constables† of the
said parish of . . . in the said county of . . . in the peace of
God and our said Lord the King, and in the due execution of
his said office then and there also being) did make an assault,
and him the said R. W. then and there did beat, wound, and
ill treat, so that his life was greatly despaired of; and other
wrongs to the said R. W. then and there did, to the great,
&c. [*Second count for a common assault.*]

For assaulting
a game-keeper
in the execu-
tion of his
duty.

County of { That A. B., late of, &c. and Q. D., late
(to wit.) { of, &c. on, &c. with force and arms, at, &c.
aforesaid, in the manor of . . . into a certain field and close
of and belonging to W. B. there lying and being, unlawfully
and injuriously did enter, and in and upon one B. R. (then
being gamekeeper of the said manor, duly deputed, authorized,

* The situation of the party assaulted is inserted, in order to show the aggravation of the offence, and thereby enhance the punishment.

† The allegation of his being a constable as satisfied by evidence that he was acting in that capacity. 2 Leach, 515.—4 T. R. 607.

and appointed by O. O. esquire, then and yet lord of the manor aforesaid)* and in the peace of God and our said Lord the King, and in *the due execution* of his duty as a gamekeeper of the said manor then and there also being, did make an assault, and him the said B. R. then and there did beat, wound, and ill treat, so that his life was greatly despaired of; and other wrongs, &c. [*Second count for a common assault.*]

County of } That A. B., late of the parish of For cruelly
(to wit.) } in the county of silk wea- beating and ill
 ver, in and upon one E. D., a female child, of the age of rish appren- treating a pa-
 years,† or thereabouts, being the servant and ap- tice, and keep-
 prentice of the said A. B., and in the peace of God and necessary food.
 our said Lord the King, then and there also being, did make an assault, and with certain rods, whips, sticks, and cords, her the said E. D. did then and there violently, cruelly, and immoderately beat, scourge, and strike, and did then and there pull, and strip, and force and compel the said E. D. to pull and strip, from off the body of her the said E. D. certain clothes and wearing apparel, wherewith the said E. D. was then and there clothed and covered, so that the said E. D. was then and there nearly naked and uncovered, and her the said E. D., as well whilst she was so covered and clothed with the said clothes and wearing apparel, as whilst she was so nearly naked and uncovered, did force and compel to work and labour violently, immoderately, and beyond her strength, in the business of the said A. B. for the space of hours then next following; and the said E. D. so working and labouring, as aforesaid, did then and there shut up, confine, and keep in a certain room there for all the time aforesaid, without giving or affording to her the said E. D., or permitting her to have suf-

* The deputation must be proved to sustain the allegation; but the title to depute, if colourable, is sufficient. 4 T. R. 681.

† A summary remedy, by complaint to a justice, being given to all apprentices, and to servants generally, against the ill usage of masters and mistresses, to support this sort of indictment, it should appear that the injured party was of such tender years, or so completely under the control of the person indicted, as, in a certain degree, to preclude the other species of protection the law affords. 3 Chit. C. L. 831.

ficient meat, drink, and food, for her nourishment and support during that time; and such assaulting, beating, and scourging, striking, and otherwise ill treating her the said E. D. in manner and form aforesaid, he the said A. B., on other different days then next following at, &c. aforesaid, did barbarously, cruelly, and inhumanly repeat and reiterate in, upon, and against the said E. D., with an intent her the said E. D. then and there feloniously, wilfully, and of his malice aforethought, to kill and murder,* and other wrongs, &c.

AGGRAVATED ASSAULTS.

Assault with
intent to
ravish.

County of } That A. B., late of, &c. yeoman, on,
(*to wit.*) } &c. with force and arms, at the parish
aforesaid, in the county aforesaid, in and upon one D. E.
spinster,† in the peace of God and our said Lord the King
then and there being, did make an assault, and her the said
D. E. then and there did beat, wound, and ill treat, so that
her life was then and there greatly despaired of, with intent
her the said D. E. against her will then and there ‡ felo-
niously to ravish and carnally know;§ and other wrongs to
her the said D. E. then and there did; to the great damage
of the said D. E., and against the peace, &c. [*Add another
count for a common assault.*]

Assault with
intent to com-
mit sodomy.

County of } That A. B., late of the parish of
(*to wit.*) } in the county of yeoman,
not having the fear of God before his eyes, but being moved
and seduced by the instigation of the devil, on the
day of in the year of the reign, &c. with force

* It is murder in a master or mistress, if their apprentice die from want of food, they being under an obligation to find it. *Self's case*, 1 Leach, 137.—*Squire's case*, 1 Russel's C. & M. 621.

† If under ten years of age, say, "a woman-child under the age of ten years; to wit, of the age of nine years," &c.

‡ If under ten years of age, say, "then and there unlawfully and feloniously to carnally know and abuse."

§ If it appear that an actual ravishment was perpetrated, the Court may direct an acquittal for the assault *with intent*, and direct a prosecution for the greater offence. *Harmwood's case*, 1 E. P. C. 411.

and arms, at the parish aforesaid, in the county aforesaid, in and upon one D. B. an infant of the age of in the peace of God and our Lord the King then and there being, did make an assault, and him the said D. B. did then and there beat, confine, and ill treat, with intent that most detestable and sodomitical crime, called buggery, with the said D. B., against the order of nature, then and there feloniously, wickedly, and diabolically to commit, and do, and perpetrate; and other wrongs to him the said D. B. then and there did, to the great displeasure of Almighty God, and to the great damage of the said D. B., and against the peace of our said Lord the King, &c. &c. [*A second count for a common assault.*]

N. B. If both parties are to be indicted, say, “unlawfully and wickedly did lay his hands on, &c.” (omitting “and other wrongs, &c. &c.”) And the jurors, &c. that the said D. B. unlawfully and wickedly did permit and suffer the said A. B. to lay his hands on him the said D. B., with intent that he the said A. B. should then and there commit and perpetrate, &c. &c.

If the attempt be to commit, &c. with a beast, say, “unlawfully and wickedly did lay his hands on a certain (cow, or mare, or mastiff bitch, *as the case was*) with intent,” &c. &c.

County of } The jurors, &c. that A. B., late of the Assault with
(to wit.) } parish of C., in the county of M., la- intent to rob.
bours, being a wicked and ill disposed person, after the By 7 Geo. 2.
1st day of May, in the year, &c. to wit, on the c. 21.
day of in the year of the reign of our Sovereign
Lord George the now King of Great Britain, &c. at
the parish aforesaid, in the county aforesaid, with force and
arms, to wit, with a certain offensive weapon and instru-
ment* called a pistol, which he the said A. B. in his right

* The statute on which this indictment is framed, comprehends two distinct offences:—*First*, assaulting with an offensive weapon, with intent to rob. *Secondly*, in a forcible or violent manner *demanding money*, with intent to rob. One, or the other offence, or both, as the case may require, should be distinctly laid in the indictment in the words of the

hand then and there had and held, in and upon D. E. in the peace of God and our said Lord the King then and there being, unlawfully, maliciously, and feloniously did make an assault, and then and there, in a forcible and violent manner, and with menaces, demand the money * of him the said D. E., with a felonious intent the said D. E. then and there to rob, and the monies of the said D. E. from the person and against the will of the said D. E. then and there feloniously and violently to steal, take, and carry away, *against the form of the statute* in such case made and provided; and against the peace of our Lord the King, his crown and dignity.

Assault and cutting a person's garments in the street or highway. Or 5 Geo. I. c. 23.

County of } The jurors, &c., that A. B. late of
(to wit.) } the parish of C. in the county of M.
labourer, being a person of a wicked and malicious mind, after the day of in the year of our Lord
(to wit) on the day of in the year of the reign of our Sovereign Lord, &c. now King of Great Britain, &c. with force and arms at the parish aforesaid, in the county aforesaid, in the King's public highway, there † in and upon D. E. spinster, in the peace of God and our said Lord the King, then and there being willfully, mali-

statute, and no periphrasis or other essential variation from them will do. R. v. Remnant, 5 T. R. 169. As to what things are comprised under the term "offensive weapon," it is said that any thing which is not in common use for any other purpose but a weapon, are *clearly* comprehended, 2 Leach, 342.—In many cases, however, even a common stick, a brass candlestick, a pistol-tinder-box, and various other instruments, when it was obvious they were used for the express purpose of menace and intimidation, have been held to be weapons within the act: 6 Evans's stat. 493, note.

* If a *demand* be to constitute the offence charged, the assault must not be made on *one*, with an intent to rob *another*, as on a *driver*, with intent to rob a *passenger in the carriage*, for that is not within the words of the statute, but will be merely an offence at common law, 1 E. P. C. 420.—If the offence charged be for the *assault with intent*, &c. the indictment *must* charge it to be *unlawfully* and *maliciously*, as well as *feloniously*; but if it be for the *demand*, it may do without those additions.

† If in a street, say "in a certain public street there situate, called street."

ciously, and feloniously, did make an assault with intent to tear* the garment and clothes† of her the said D. E. and that he the said A. B. in the king's public highway, did then and there ‡ wilfully, maliciously, and feloniously, tear one printed linen gown, of the value of of the goods and chattels of the said D. E. being part of the garments and clothes of her the said D. E. on her person, then and there in wear, to the great damage of the said D. E.; to the evil and pernicious example of all others in the like case offending in contempt of our said Lord the King and his laws, and *against the form of the statute*, § in such case made and provided, and against the peace of our said Lord the King, his crown and dignity.

BAIL. ||

County of } The Jurors, &c., that on the day For personat-
(to wit.) } of in the year of the Reign ing and repre-
of our Sovereign Lord George the Third, now King of person and be-
Great Britain, &c., at W. in the county of M. there issued coming bail in
his name be-
fore a commis-
sioner in the
country.

* The statute specifies in terms many modes of spoiling, as tear, cut, burn, &c. but it cannot be necessary to state more than the one method by which the injury was actually attempted to be committed.

† Where there is only one garment injured, it is sufficient to describe that one by its usual appellation, as gown, or petticoat, &c.

‡ The injury must be committed *then and there*, that is, it must be one continued act with the assault.

§ To satisfy the words of the statute, four things are necessary. 1st, The offence must be committed in a highway of some description. 2d, It must be done willfully and maliciously. 3d, It must be done with intention to do the specific injuries, or some one of them, specified by the statute, and not with an intention to commit some greater, or less, offence, in the attempt to do which the particular injury was effected. 4th, The intention must have been actually carried into effect, 1 Leach, 331.

¶ Personating bail in courts of justice was made felony *sans* clergy by 21 J. 1. c. 26.—Before judges on their circuits, and before commissioners in the country, a *single* felony, by 4 & 5 Wm. & Mar. c. 4.—Before judges out of court, not being on their circuits, as well as before justices of the peace, it is a misdemeanour. This precedent is indeed for the offence under the statute of Wm. & Mar.; but in order to avoid multiplying

out of the court of our Lord the King of Common Bench, a certain writ called a *capias*, by which said writ the sheriff of the county of S. was commanded to take A. B., late of yeoman, and C. D., if they should be found in his bailiwick, and safely keep them, so that he might have their bodies before the justices of our said Lord the King at Westminster, in three weeks from the day of St. Michael, to answer to E. F. of a plea that they render to him 50*l.* which they owed to, and unjustly detained from him, which said writ was indorsed, to take bail by oath for 30*l.* and upwards, according to the form of the statute in such case made and provided: and the said sheriff of the said county of S. was, by such writ, directed to take bail for the said A. B.'s appearance in the said court of our said Lord the King of Common Bench, at the return of the said writ, for the said sum of 30*l.* and upwards, by affidavit filed in the said court of our said Lord the King of Common Bench, according to the form of the statute in such case made and provided, which said writ, so indorsed for bail as aforesaid, afterwards and before the return thereof, (to wit) on the day of in the year aforesaid, at in the said county of was delivered to the said sheriff, to be executed in due form of law by him the said sheriff; by virtue of which said writ the said sheriff, afterwards and before the return thereof, (to wit) on the day of in the year aforesaid, at aforesaid, in the said county of S. took and arrested the said A. B. by his body, and then and there detained him in his custody, until the said sheriff, afterwards and before the return of the said writ, (to wit) on the day of in the year aforesaid, took and conveyed the said A. B. to his Majesty's common gaol of the said county, situate in the parish of in the said county of S., for want of bail in the aforesaid action: and the jurors aforesaid, upon their oath aforesaid, do further present, that

precedents unnecessarily, it is conceived it will afford sufficient suggestions for the drawing of an indictment for the misdemeanour of personating bail on a recognizance before a justice, in which it is equally necessary to insert all the introductory proceedings, by way of allegation,

afterwards, (to wit) on the day of in the said year of the reign of our said Lord the King, G. H. late of the parish of in the said county of S., labourer, being a malicious and ill-designing person, and contriving and intending to injure and bring one I. K. to great expences, and unlawfully to subject him, the said I. K., to the payment of a great sum of money with force and arms at the parish of in the said county of S., in his own proper person, came before L. M. of the parish last aforesaid, in the county aforesaid, gentleman, then being one of the commissioners of our said Lord the King, lawfully authorized and impowered, by virtue of a certain commission, duly issued under the seal of the said court of Common Bench, to take and receive all and every such recognizance or recognizances of bail or bails in the said county of S., as any person or persons should be willing or desirous to acknowledge or make before him the said L. M. in any action or actions depending in the said court of our said Lord the King of Common Bench at Westminster, in such manner and form, and by such recognizance or bail piece as the said justices of the said court of Common Bench have used to take the same, according to the form and effect of the statute in that case made and provided: and that he the said G. H., on the said day of in the year aforesaid, with force and arms, at the parish last aforesaid, in the county aforesaid, before the said L. M., feloniously did represent and personate the person of the said I. K. of in the county aforesaid, yeoman, and then and there, in the name and by the addition of him the said I. K., did acknowledge and enter into a certain recognizance of bail for the said A. B., that if it should happen (*here recite the bail piece,*) he, the said L. M. being then and there lawfully authorized and impowered as aforesaid to take a recognizance of bail in that behalf in the said county of S., according to the form and effect of the statute in that case made and provided, whereby the said I. K. so represented and personated as aforesaid, was liable to the payment of such sum of money for debt and damages as should be recovered by the said E. F.

Second count.

against the said A. B. in the said above-mentioned suit and action, wherein he the said I. K. was represented and personated as aforesaid, as if he the said I. K. had really acknowledged and entered into the same recognizance of bail, to the great damage of the said I. K. to the evil and pernicious example of all others, in the like case offending against the form of the statute in such case made and provided, and against the peace of our said Lord the King, his crown and dignity. And the jurors, &c., that the said I. K. late of the parish of in the county of S., labourer, being a malicious and ill-designing person, and wickedly contriving and intending to prejudice and bring the said I. K. to great expences, and unlawfully to subject him, the said I. K., to the payment of a great sum of money on the said day of in the said year of the Reign of our said Lord the King, at the parish of in the said county of S., did come in his own proper person before the said L. M., then being one of the commissioners (as above), and that the said G. H., on the said day of in the year aforesaid, with force and arms, at the parish of in the said county of S., before the said L. M., feloniously did represent and personate the person of *him* the said I. K. of in the said county of S., yeoman, and then and there in the name, and by the addition of him the said I. K., feloniously did acknowledge and enter into a certain recognizance of bail, in a suit and action then depending in the said court of our said Lord the King of Common Bench at Westminster, wherein the said E. F. was plaintiff, and A. B. defendant, and in which said action bail was required by law for all such damages, costs, and charges which should be adjudged to the said E. F. in the same suit and action (he, the said L. M. being then and there lawfully authorized and impowered as aforesaid to take a recognizance of bail in that behalf in the said county of S., according to the form and effect of the statute in that case made and provided), whereby the said I. K. so represented and personated as aforesaid, was liable, &c. (*Conclude as in first count.*)

BARRETRY.*

County of } That A. B. † late of in the For being a
 (to wit.) } county of labourer, on the common barretor.
 day of in the year of the reign of our
 Sovereign Lord George, &c., and on divers other days and
 times, ‡ as well before as after, was yet a common barretor,
 and a daily and public disturber of the peace of our said
 Lord the King, and also a quarreller and sower of strife
 and discord, as well among his neighbours, as among other
 liege subjects of our said Lord the King; and that he § the
 said A. B., on the said day of and on the
 said divers other days and time, at the parish aforesaid,
 in the county aforesaid, divers quarrels, strifes, suits,
 and controversies as well among his neighbours as other
 the honest and liege subjects of our said Lord, &c., then
 and there did move, procure, stir up, and excite, to the
 great disturbance of the peace of our said Lord the King,
 to the evil example, &c., and against the peace, &c. &c.

* Is an offence of common law; the stat. 34 Edw. 3. c. 2. directs the mode of punishment, wherefore the indictment may conclude "*against the form of the statute,*" or not; Cro. Eliz. 148, but must conclude "*against the peace,*" 1 Hawk. c. 81. and the words "common barretor" are essential.

† If a common person be convicted of this crime, fine, imprisonment, and sureties for good behaviour are the punishments; if an attorney, a conviction at sessions will be a good ground for application against him to the courts above: and he is also punishable by transportation. 19 Geo. 2. c. 29.

‡ It is sufficient to *charge* the offence *generally*, but notice must be given before trial, what specific matters are to be given in evidence, that the defendant may know against what to defend himself. 1 Hawk. c. 81.—2 Hawk. c. 25.

§ It is said a feme covert cannot be indicted *for barretry eo nomine*, 2 Roll. R. 39. but women *generally* may be as *common scolds*, 3 Inst. 219. 4 Black. Com. 168. and if convicted shall be sentenced to the ducking-stool.

BASTARDS.

*For Disobedience of Orders of Justices, for the Maintenance of Bastard Children.**

Against an
overseer for
not paying a
weekly sum for
the support of
a bastard child
according to
order of jus-
tices.

County of } That B. B. of, &c. before the making
(to wit.) } of the order of justices hereinafter men-
tioned, to wit, on, &c. at, &c. aforesaid, was delivered
of a female bastard child, which said bastard child, at
the time of the making of the order, and also at the
time of the contempt and disobedience hereinafter men-
tioned; was and yet is living, to wit, at the township of O.
aforesaid. And the jurors, &c. do further present, that
the said B. B. having such bastard child as aforesaid, she
the said B. B. on, &c. aforesaid, at, &c. aforesaid, became,
and was very poor and impotent, and not able to provide
for herself and her said bastard child; and the said B. B.
so being very poor and impotent, and not able to provide
for herself and her said bastard child as aforesaid, she the
said B. B. afterwards to wit, on, &c. aforesaid, at, &c.
aforesaid, applied to the then overseers of the poor, of and
for the township of O. aforesaid, for relief in the premises,
and that the then overseers of the said poor, and each and
every of them, then and afterwards did wholly neglect and
refuse to relieve the said B. B. so being very poor and im-
potent as aforesaid, to wit, at, &c. aforesaid. And the
jurors, &c. do further present, that the said B. B. so being
very poor and impotent, and unable to provide for herself
and her said bastard child, after such neglect and refusal
as aforesaid, to wit, on, &c. aforesaid, at, &c. aforesaid,
appeared before M. M. and W. W. esquires, then being
two of the justices of our said Lord the King, assigned, &c.
and then and there, before the said M. M. and W. W. be-
ing such justices as aforesaid, took her corporal oath upon

* Disobedience of orders of justices, commissioners, &c. is an of-
fence indictable at common law, though a specific penalty be provided
by statute for the neglect of that duty which the order is intended to en-
force. 2 Burr. 799. 4 T. R. 205. 8 E. R. 41. It must be stated and
shown, that the order was served on *all the defendants*, if there be several,
and the want of this allegation cannot be supplied by stating that they
were *all requested* to perform the duties required by the order, but the
indictment will be bad on demurrer. 3 E. R. 52.

the holy gospel of God, and did depose, that she the said B. B. was very poor and impotent, and unable to maintain herself and her said child; and that she the said B. B. had then lately applied for relief to the then overseers of the poor of the said township, and was by them the said overseers refused to be relieved on that occasion. And the jurors, &c. upon their oath, aforesaid, do further present, that the said M. M. and W. W. being such justices as aforesaid, did thereupon, afterwards to wit, on, &c. aforesaid, at, &c. aforesaid, duly summon the said overseers to appear before them, the said M. M. and W. W. being such justices as aforesaid, in order to show cause, if any there should be, why relief should not be given to the said B. B. in the premises, and that the said then overseers having been so summoned as aforesaid, did before the said M. M. and W. W. being such justices as aforesaid, refuse to relieve the said B. B. on that occasion, and did not show to the said justices any sufficient cause why relief should not be granted to the said B. B., and that the said M. M. and W. W. being such justices as aforesaid, did thereupon, afterwards to wit, on, &c. aforesaid, at, &c. aforesaid, make their certain order in writing,* signed with the proper hands, and sealed with the respective seals of them the said M. M. and W. W. so being such justices as aforesaid, whereby, after reciting, &c. [*here set out the order verbatim.*] And the jurors, &c. do further present, that one J. R. late of, &c. on, &c. and long before and afterwards, was one of the overseers of the poor, of and for the township of O. aforesaid, having duly accepted the said office, to wit, at the township of O. aforesaid, and that it was then and there the proper office and duty of the said J. R. as such overseer as aforesaid, well and faithfully to execute and obey the said order of the said M. M. and W. W. so made as aforesaid, according to the exigency thereof. And the jurors, &c. do further present, that the said order of the said M. M. and W. W. so made

* The indictment must state that the order was positively made, and not set it forth by way of recital, (2 Ld. Raym. 1363.) though an indictment for not obeying a warrant need not set forth the conviction at length on which it was founded. Id. 1196.

as aforesaid, afterwards to wit, on, &c. aforesaid, at, &c. aforesaid, was duly exhibited and delivered to the said J. R. so being such overseer as aforesaid, to be by him well and faithfully executed and obeyed in all things, according to the exigency thereof, and according to the said office and duty of the said J. R. as such overseer as aforesaid. And the jurors, &c. do further present, That the said J. R. so being such overseer as aforesaid, and so having seen and received the said order as aforesaid, afterwards, to wit, on the said, &c. and continually from thenceforth, for and during all such time as the said J. R. continued in his said office of overseer of the poor of the town of O. aforesaid, unlawfully, wilfully, obstinately, and contemptuously did neglect and refuse, and hath hitherto wholly neglected and refused to pay unto her the said B. B. the sum of two shillings and sixpence weekly, and every week, for and towards the support and maintenance of her the said B. B. and her said bastard child, as by the said order he the said J. R. as such overseer as aforesaid, was required to do; and the same and every part thereof is still wholly due and unpaid to the said B. B. although she the said B. B. whilst the said J. R. remained and continued as such overseer as aforesaid, to wit, on, &c. aforesaid, and on divers other days and times, as well before as after, &c. at, &c. aforesaid, requested him the said J. R. to pay her the same, * and although he the said J. R. hath not, at any time whatsoever, hitherto been otherwise ordered, according to law, to forbear the said allowance, contrary to the said office and duty of him the said J. R. in that behalf, to the manifest hindrance and subversion of justice, to the great damage and impoverishment of the said B. B. and her said child, in contempt, &c. to the evil and pernicious example, &c. and against the peace, &c.

Indictment
against the
father of a bas-
tard child, for
disobeying an
order of justice
for mainten-
ance.

County of } That H. T. of the parish of M.
(to wit.) } in the county of D. single woman, be-
fore the making of the order of justices, hereafter men-
tioned, to wit, on, &c. at the said, &c. was delivered
of a living female bastard child. And the jurors,

* As to averment of request, see 1 T. R. 316.

&c. do further present, that the said H. T. having been so delivered of such bastard child, within the parish aforesaid, afterwards, to wit, on, &c. at the parish aforesaid, complaint thereof, and also that the said child was then christened by the name of Jane, and was then chargeable to the said township, and likely so to continue, was, by the overseers of the poor of the said parish of M. made to J. R. esquire, and T. B. esquire, two of his majesty's justices of the peace and quorum, in and for the said county of D. and residing next unto the limits of the parish church of M. in the said parish of M., in the said county, and she the said H. T. was by them the said overseers of the poor, then and there brought, and personally appeared, before the said justices so residing, to be, and was thereupon, then and there, examined upon oath, by and before the said justices of and concerning the cause and circumstance of the begetting and birth of such bastard child. And the jurors, aforesaid, upon their oath aforesaid, do further present, that the said H. T. upon her said examination upon oath, then and there taken in writing, by and before the said justices, deposed and declared, that she was delivered of such bastard child, as aforesaid, and that R. M. I. of, &c. was the true and only father of the said bastard child. And the jurors, &c. do further present, that the said J. R. esquire, and T. B. esquire, so being such justices, residing as aforesaid, did thereupon, afterwards to wit, on, &c. last aforesaid, at the parish of M. aforesaid, duly summon the said R. M. I. to be and appear before them the said justices to make his defence of and concerning the premises, and to show cause why an order of maintenance should not be made upon him for the cause aforesaid, to which said summons he the said R. M. I. then and there before the making of any order in that behalf, personally appeared before the said justices, but did not make any sufficient defence, or show any cause why an order should not be made upon him, whereupon the said justices, upon hearing the said complaint upon oath, afterwards to wit, on, &c. last aforesaid, at the parish aforesaid, did, by their discretion, make order of and concerning the premises, and by their said order in writing, under their hands and seals, bearing date,

&c. reciting to the effect hereinbefore mentioned, adjudged the same to be true, and thereby, as well upon examination of the cause and circumstances of the premises, upon the oath of the said H. T. as otherwise, did declare and adjudge the said R. M. I. [*set forth the order verbatim.*] And the jurors, &c. do further present, that after the making the said order to wit, on, &c. last aforesaid, at the parish aforesaid, notice of the aforesaid order was duly given to him the said R. M. I. and that he the said R. M. I. was duly made acquainted with the contents thereof. And the jurors, &c. do further present, that the said bastard child is yet living, and hath always from the time of making the said order, until the day of taking this inquisition, been and continued, and now is, chargeable to the said parish of M., to wit, at the parish aforesaid, and that before and at the time of making of the said order, and from thence continually, till the taking of this inquisition one and one were and still are overseers of the poor of the said parish of M. duly constituted, of which he the said R. M. I. had due notice, to wit, at the, &c. aforesaid; and the jurors, &c. do further present, that the said R. M. I. not regarding the said order, nor the laws and statutes in such case made and provided, did not upon notice of the said order forthwith, pay or cause to be paid, &c. [*negating the performance of the duty in the words of the order*] although so to do, he the said R. M. I. afterwards to wit, on, &c. and often, both before and afterwards, to wit, at the parish aforesaid, was duly requested by the said, &c. so being such overseers as aforesaid, but on the contrary thereof, he the said R. M. I. on, and from the said, &c. until the taking of this inquisition, unlawfully, wilfully, obstinately, and contemptuously hath neglected and refused to pay, or cause to be paid, the said sum of twenty shillings, so by them paid as aforesaid, as also the said sum of one shilling weekly; and every week, from the time of making the said order, hitherto, contrary to the direction of the said order, and in manifest breach and contempt of the same, to the great damage of the inhabitants of the said parish of M., to the evil and pernicious example of, &c. and against the peace, &c.

CHALLENGES.

County of } That D. O. &c. &c. being a per- For sending a
 (to wit.) } son of a turbulent and quarrel- written chal-
 some disposition, and not regarding the laws of this lenge.
 realm, and unlawfully, wickedly, and unjustly contriving
 and intending to vex, injure, disquiet, and terrify one A. B.
 &c. being a person of a quiet and peaceable disposition,
 and unlawfully to expose him the said A. B. to scandal,
 shame and reproach, and to cause, instigate, and provoke
 him the said A. B. to fight a duel with him the said D. O.
 and thereby break the peace of our said Lord the King, on,
 &c. with force and arms, at, &c. unlawfully, wickedly, and
 maliciously, did compose and write, and cause and pro-
 cure to be composed and written, a certain address on paper
 containing a challenge to fight a duel with him the said
 D. O. which said address was and is in the words and
 figures following, &c. [*Here copy it.*] To the great damage,
 &c. to the evil, &c. and against the peace, &c.* [*Second*
count for the libel contained in the address.]

County of } That T. M. late of, &c. being a For sending a
 (to wit.) } person of a wicked and malicious challenge in-
 disposition, and a common duellist, fighter, and dis- closed in a let-
 turber of the peace of our said Lord the King, and not ter.
 having the fear of God before his eyes, but being moved
 and seduced by the instigation of the devil, on, &c. with
 force and arms, at, † &c. aforesaid, wickedly, and mali-
 ciously intending and designing as much as in him lay, not
 only to disquiet and terrify one D. E. but also the said

* In more points of view than one, challenges to break the peace by fighting are indictable as misdemeanours, as well in those who send them, as in those who knowingly are the bearers of them. Upon the same principle using such words either orally, or written, as have a *direct* tendency to provoke another to send a challenge, are equally subject to indictment, and *that* even though the provocation do not succeed. *R. v. Philips*, 6 E. R. 464.—*R. v. Rice*, 3 T. R. 581.

† The venue may be laid either in the county where the challenge was written, or in that where it was received. 2 Campb. 506.—1 Leach, 143.

D. E. maliciously, violently, and wickedly to kill and murder, and he the said T. M. his said malicious and wicked intentions and designs the sooner to complete, perfect, and put in practice, afterwards, to wit, on, &c. with force and arms, at, &c. aforesaid, did unlawfully and wickedly provoke and excite the said D. E. to fight a duel against him the T. M. with a sword, and that he the said T. M. a certain challenge in the name of the said T. M. in the form of a letter to the said D. E. directed, did then and there maliciously, wickedly, and diabolically write and cause to be written, and which said letter was to the tenor and effect following, that is to say, [*here set forth the letter with proper immuendoes to explain it,*] which said challenge, so as aforesaid written and directed, he the said T. M. afterwards, to wit, on the said, &c. at, &c. aforesaid, maliciously and wickedly, to the said D. E. did send, and deliver, and cause to be sent and delivered, to the great damage and terror of him the said D. E. to the evil example, &c. and against the peace, &c.

For sending a written challenge to the prosecutor, and posting him as a coward, by sticking up a written paper in a public place, in consequence of prosecutor's declining to fight.

First count for sending a written challenge to the prosecutor, and posting him.

County of } That H. H. late of, &c. being of
(to wit.) } a turbulent, wicked, and malicious disposition, and designing, and intending to do great bodily harm and mischief to one R. B. heretofore, to wit, on, &c. with force and arms, at, &c. did unlawfully, wickedly, and maliciously, send and cause to be sent, a certain written challenge to the said R. B. and did thereby provoke, excite, and challenge the said R. B. unlawfully to fight a duel with and against him the said H. H., which said written challenge is as follows: that is to say, [*here set out the challenge.*] And the jurors, &c. do further present that the said R. B. having then and there refused to fight with and against him the said H. H. in pursuance of such unlawful, wicked, and malicious challenge as aforesaid, he the said H. H. for the completing his said evil disposed purpose and design, and further to provoke and incite the said R. B. to fight a duel, with and against him the said H. H. afterwards, to wit, on the same, &c. with force and

arms, at, &c. aforesaid, unlawfully, wickedly, and maliciously, did stick up, place, and expose to public view, and cause and procure to be stuck up, placed, and exposed to public view, to wit, upon and against a certain sign-post, of and belonging to a certain dwelling-house and public Inn, there called and known by the name and sign of the White Swan, a certain paper writing, with the name of him the said H. H. thereunto subscribed, containing certain scurrilous and abusive matter concerning him the said R. B. which said paper writing is as follows: that is to say, "In consequence of an anonymous letter received by me, (meaning himself the said H. H.) which I, (again meaning himself the said H. H.) have reason to believe, was written by R. B. (meaning the said R. B.) I (meaning himself the said H. H.) have sent him (meaning the said R. B.) a challenge, hoping for satisfaction suitable to a gentleman, which he (meaning the said R. B.) has refused, therefore I (meaning himself the said H. H.) now post him (meaning the said R. B.) as a coward, H. H.—M. Nov. 10th, 1800," to the great damage, scandal and disgrace of the said R. B. and against the peace, &c. And the jurors aforesaid, upon their oath aforesaid, do further present, that the said H. H. unlawfully, wickedly, and maliciously, designing and intending great bodily harm to the said R. B. afterwards, to wit, on the same, &c. aforesaid, at, &c. aforesaid, in pursuance of and for the completing his said last mentioned malicious and wicked intent and design, with force and arms, did unlawfully, wickedly and maliciously, provoke, excite, and challenge the said R. B. unlawfully to fight a duel, with and against him the said H. H. to the great damage and terror of him the said R. B. and against the peace, &c.

Second count,
for a common
challenge

County of } That W. R. late of, &c. intend-
(to wit.) } ing to procure great bodily harm
and mischief to be done to R. B. late of the same place,
Esquire, and to incite and provoke the said R. B. unlawfully to fight a duel with and against one W. H. late of the same place, Esquire, on, &c. with force and

Against a
person who
carried a
challenge.

First count, for delivering a written challenge of and from W. H. to the prosecutor.

Second count, for delivering a written challenge, as from and on the part and by the desire of W. H. to the prosecutor.

Third count, for provoking and inciting the prosecutor to fight, &c.

arms, at &c. did unlawfully and wickedly deliver and cause to be delivered, a certain written challenge of and from the said W. H. to the said R. B. unlawfully to fight a duel with and against the said W. H. which said written challenge is as follows, that is to say, [*here set out the written challenge,*] to the great damage, &c. and against the peace, &c. And the jurors, &c. that the said W. R. intending as aforesaid, afterwards, to wit, on the same, &c. aforesaid, with force and arms, at, &c. aforesaid, unlawfully and wickedly did deliver and cause to be delivered a certain written challenge as from and on the part and by the desire of the said W. H. to the said R. B. unlawfully to fight a duel with and against the said W. H. which said written challenge is as follows, that is to say, [*here set out the written challenge,*] against the peace, &c. And the jurors, &c. that the said W. R. intending as aforesaid, afterwards, to wit, on the same, &c. aforesaid, with force and arms, at, &c. aforesaid, did unlawfully and wickedly provoke and incite the said R. B. unlawfully to fight a duel with and against the said W. H. to the great damage, &c. and against the peace, &c.

For a personal challenge to fight a duel.

County of } That R. R. late of, &c. being a
(to wit.) } person of an evil mind, and of a
turbulent and quarrelsome temper and disposition, and not having any regard for the laws of this realm, most unlawfully, wickedly, and unjustly, and out of malice aforesaid, devising, contriving, and intending not only to vex, injure, hurt, disquiet, and terrify O. B. late of, &c. being a person of good name, fame, character, credit and reputation, and of a quiet and peaceable temper and disposition, but also to expose the said O. B. to scandal, shame and reproach, and to cause, instigate, incite, and provoke the said O. B. to fight a duel with him the said R. R. and thereby to cause the said O. B. to break the peace of our said Lord the King, he the said R. R. in order to complete, perfect, and bring to effect his most unlawful and wicked purposes aforesaid, upon, &c. with force and arms at, &c. aforesaid, did unlawfully, wickedly, wilfully, mali-

ciously, and openly, and in the presence and hearing of him the said O. B. and without any just cause or provocation whatsoever, but of his malice aforethought, and in a threatening, challenging, and provocative manner, tell him the said O. B. that he (meaning the said R. R.) had been told by Mr. M. (meaning one T. M. of, &c. in the county of) that he (meaning the said O. B.) had taken great liberties with the character of him the said R. R. and upon the said O. B. then and there assuring the said R. R. that such information was not true, he the said R. R. did then and there in a threatening, challenging, and provoking manner as aforesaid, further tell him the said O. B. that he (meaning the said O. B.) must come before the said Mr. M. (again meaning the said T. M.) to contradict it, but on the said O. B. then and there refusing so to do, the said R. R. did then and there in a threatening, challenging, and provoking manner, as aforesaid, further tell him the said O. B. that he (meaning himself the said R. R. expected personal satisfaction from him (meaning the said O. B.) as soon as possible, in the same manner as he, (meaning himself the said R. R.) had lately received satisfaction, of and from Mr. P. (meaning one S. P.) with whom he (meaning himself the said R. R.) had recently fought a duel, with a design and intention to instigate, incite, move, and provoke the said O. B. to fight a duel with him the said R. R. as aforesaid, and thereby to cause the said O. B. to break the peace of our said Lord the King as aforesaid, and other mischiefs upon him the said O. B. he the said R. R. did then and there with force and arms, unlawfully and maliciously bring, to the great damage, scandal, and disgrace of him the said O. B. in contempt, and to the evil and pernicious example, &c. and also against the peace, &c.

County of..... } That A. B. late of, &c. unlaw- For writing a
(to wit.) } fully and maliciously intending to letter inciting
do great bodily harm and mischief to D. H. and to break another to send
the peace, &c. on, &c. with force and arms, at, &c. wick- a challenge to
edly and maliciously did endeavour to stir up, provoke, fight a duel.
and excite the said D. H. to challenge the said A. B. to

fight a duel with him the said D. H. by then and there writing, sending, and delivering to him D. H. a scandalous, malicious, and provoking letter from the said A. B. to the said D. H. to the tenor and effect following, viz. No. 28, street day of 18.., "Sir, (meaning the said D. H.) it will, I (meaning the said A. B.) conclude, from the description you gave of your ideas with respect to insult, in a conversation with Mr. on Monday last, be sufficient for me to tell you, that in the business respecting the last election of a mayor for the borough of as far as it relates to me, you have behaved like a blackguard; I shall expect to hear from you on this subject, and will punctually attend to any appointment you may think proper to make." (meaning that the said A. B. would punctually attend to any appointment that the said D. H. might think proper to make for the purpose of his fighting a duel with and against the said D. H.) signed by the said D. H. with intent to stir up, provoke, and excite the said D. H. to challenge the said A. B. to fight a duel with him, &c. against the peace, &c.

For assaulting
a person, and
provoking to
fight by opprobrious lan-
guage.

County of } That A. B. late of, &c. being a
(to wit.) } disturber of the peace of our said
Lord the King, on, &c. with force and arms, at, &c. aforesaid, in and upon one W. Q. in the peace of God and our said Lord the King then and there being, did make an assault, and with threats and opprobrious language, then and there wickedly and maliciously did stir up, provoke, and excite him the said W. Q. to fight a battle with and against him the said A. B. and further, that the said A. B. afterwards, to wit, on the same day and year abovementioned, at, &c. aforesaid, came with force and arms, and with threats and opprobrious language then and there wickedly and maliciously did stir up, provoke, and excite him the said W. Q. then and there being in the peace of God and of our said Lord the King, to fight with and against him the said A. B. a duel with swords and pistols, and other wrongs to the said W. Q. then and there did, to the great damage and terror of him the said W. Q. in contempt, &c. to the evil example, &c. and against the peace, &c.

CHEATS.

*Indictments for, and False Pretences, at Common Law,**

County of } That H. H. late of, &c. on, &c. For selling by
(to wit.) } and from thence until the taking this false weights
and measures
inquisition, did use and exercise the trade and business of
a shopkeeper, and during that time did deal in the buying
and selling by weight of divers goods, wares, and merchandizes, to wit, at, &c. aforesaid; and that the said H. H. being a person of wicked and depraved mind, and contriving and fraudulently intending to cheat and defraud the subjects of our said Lord the King, whilst he used and exercised his trade and business, to wit, on the said, &c. and on divers other days and times between that day and the day of taking this inquisition, at, &c. aforesaid, did knowingly, wilfully, and publicly keep in a certain shop there, wherein he the said H. H. did so as aforesaid carry on his said trade, a certain false pair of scales for the weighing of goods, wares, and merchandizes, by him sold in the way of his said trade, which said scales were then and there by artful and deceitful ways and means so made and constructed as to cause the goods, wares, and merchandizes weighed therein and sold thereby, to appear of greater weight than the real and true weight by one part of such apparent weight; and that the said H. H. on, &c. aforesaid, at, &c. aforesaid, (he the said H. H. then and there knowing the said scales to be false, as aforesaid,) did knowingly, willingly, and fraudulently sell and utter to one G. R. † a subject of our said Lord the King, certain goods in the way of his said trade, to wit, a large quantity of flour weighed in and by the said false scales, as and for fifty

* For the characteristic differences between cheats at common law, and by the statutes, see *ante*, p. 127. The cases to which cheats indictable at common law seem to be confined, are selling by false weights and measures, or with counterfeit marks generally; and other such frauds as affect the interests of the public at large.

† It is better to alledge the offence to have been committed against some individual by name, but it would be sufficient if it were laid to be "to divers faithful subjects to the jurors unknown." 2 Stark. 467.

pounds weight of flour, whereas in truth and in fact the weight of the said flour, so sold, as aforesaid, was short and deficient of the said weight of fifty pounds by one eighth part of the said weight of fifty pounds, to wit, at, &c. aforesaid, to the great damage of the said G. R., to the evil example, &c., and against the peace, &c.

For a misdemeanour for defrauding a person of money by counterfeiting the post mark on a piece of paper folded up like a letter.

County of } That B. D. late of, &c. being an
(*to wit.*) } evil disposed person, and devising
and intending to deceive and defraud the liege subjects of our said Lord the King of their monies by colour and pretext of the duties payable to our said Lord the King for postage and conveyance of letters on, &c. at, &c. aforesaid, in and upon a certain piece of paper folded up and sealed in the form of a letter, directed to W. B. R., esquire, at, &c. [*set out the direction*] fraudulently and deceitfully did counterfeit and resemble, and cause to be counterfeited and resembled, the impression of the mark or stamp used by the deputy post-master of the town of to mark letters sent by the post from the town of to the city of L., to wit, the and also the impression of the mark or stamp used by the post-master general at the city of L., to stamp letters brought by the post from other post towns to the said city of L., which said mark denotes the day and month when such letters are brought to the last mentioned city; and that the said B. D. by colour of the said counterfeit impressions, and under pretence that he the said B. D. had paid the sum of eight pence for the postage of the said letter, did then and there, to wit, on the said, &c. at the said, &c. fraudulently and deceitfully demand, receive, and have of one P. H. for and on behalf of the said W. B. R. esquire, the sum of eight pence of lawful money of Great Britain.* And so

* See the case of *R. v. Douglass*, 1 Campb. 212, where it was decided, that a servant not having money of his employer in his hands at the time of his paying money on such employer's account, it ought not to be averred in an indictment against a person so obtaining monies by

the said B. D. him the said W. B. R. esquire, of the said sum of eight pence, then and there fraudulently and deceitfully did deceive and defraud to the great damage of the said W. B. R. and against the peace, &c.

*Indictments for, on Statutes.**

County of } That D. O. late of, &c. being an For obtaining goods from a tradesman under pretence of being a servant to a customer, and sent for them by him.
 (to wit.) } evil disposed person and common cheat, and contriving and intending unlawfully, fraudulently and deceitfully to cheat and defraud one, R. C. of, &c. woollen draper, of his goods, wares, and merchandizes, on, &c. with force and arms, at, &c. aforesaid, unlawfully, knowingly, and designedly did falsely pretend to the said R. C. that he the said D. O. then was the servant of one C. Q. of tailor, (the said C. Q. then and long before, being well known to the said R. C. and a customer of the said R. C. in his said business and way of trade) and that he the said D. O. was then sent by the said C. Q. to the said R. C. for ten yards of certain superfine woollen cloth, by which said false pretences the said D. O. did then and there, to wit, on, &c. at, &c. aforesaid, unlawfully, knowingly, and designedly obtain from the said R. C. ten yards of superfine woollen cloth of the value of fifteen pounds, fifteen shillings, of the goods, wares, and merchandizes of the said R. C. with intent then and there to cheat and defraud him the said R. C. of the same, whereas in truth and in fact the said D. O. was not then the servant of the said C. Q. and whereas he the said D. O. was not then, or ever hath been sent by the said C. Q. to the said R. C. for the said cloth, or for any cloth whatsoever, to the great

false pretences from such employer, *actually paid by the servant*, that they were the proper monies of the employer; for the fact would be at variance with the averment.

* In all indictments for obtaining money on false pretences, it is necessary to allege by special averment the falsity of each of the particular things which go to make up the false pretences, or at least so many as are intended to be insisted on; and it is not enough (under 30 Geo. 2.) to allege generally, that the defendant *did falsely pretend, &c. by means of which false pretences* he did obtain, &c.; but the false pretence must be applied to each particular thing to be falsified, and not to the whole generally. *R. v. Perrot, 2 M. & S. 379.*

damage of the said R. C. to the evil example, &c. against the peace, &c. and also against the form of the statute, &c.

For falsely pretending a child to be a pauper of a parish, and thereby obtaining money for its support.

County of } That H. B. late of, &c. on, &c. with
(*to wit.*) } force and arms, unlawfully, knowingly, and designedly did falsely pretend to one D. D., then being one of the overseers of the poor of the parish aforesaid, in the county aforesaid, that a certain female child which he the said H. B. had with him belonged to the said parish, (meaning that the said female child was a pauper of and belonging to the said parish of) and that she was born in the hamlet of M. in the same parish, and that he the said H. B. had married the said child's mother, and that she had lived with him ten years, and then died, (meaning that he the said H. B. had been married to the mother of the said female child, and that the mother of the said female child had cohabited and lived with him the said H. B. ten years after such marriage, and then died,) and that his family was very large, and that he was not able to support the said child without some relief from the said parish, by means of which said false pretences he the said H. B. did then and there unlawfully, knowingly, and designedly obtain, require, and get into his hands and possession of and from the said D. D. five shillings in monies numbered of the monies of the said D. D. with intention then and there to cheat and defraud him of the same, whereas in truth and in fact the said female was not a pauper of and belonging to the said parish, nor was she born in the said hamlet of M. in the said parish, and whereas in truth and in fact the said H. B. had not been married to the said child's mother, nor had she lived with him ten years and then died, to the great damage and deception of the said D. D. to the evil example, &c. against the peace, &c. and also against the form of the statute, &c.

Defrauding a person of several goods by giving him in payment an order for payment of money of no value.

County of } The Jurors, &c. That B. C. being a
(*to wit.*) } wicked and evil disposed person and a common cheat, and contriving and intending to cheat and defraud one B. M. jeweller and goldsmith of his wares and merchandize, for the support of his profligate way of

life, on the day of in the year, &c. at L. (that is to say) at the parish of A. in the city of L. aforesaid, did go to the shop of the said B. M. there situate, and then and there unlawfully, knowingly, and designedly did falsely pretend to the said B. M. that if he the said B. M. would have the cypher of him the said B. C. engraved upon a pair of candlesticks, &c. which he the said B. M. then showed to the said B. C. for his choice, and would send them the next day to him the said B. C. to his lodgings at, &c. with a bill and receipt, that he the said B. C. would pay for them upon the delivery, by means of which said false pretence he the said B. C. afterwards (to wit) on the said day of in the year aforesaid, with force and arms at the parish last aforesaid, in the county aforesaid, unlawfully, knowingly, and designedly did obtain from the said B. M. one pair of candlesticks of the value of, &c. of the goods, wares, and merchandises of him which said B. M. with intent then and there to cheat and defraud him of the same. Whereas in truth and in fact when he the said B. M. on the day and year aforesaid, sent the said goods, wares, and merchandises, to the said lodgings of him the said B. C. at the said parish of, &c. in the county aforesaid, with a bill and receipt, he the said B. C. did not pay for them upon the delivery, but did then and there unlawfully, knowingly, designedly, fraudulently, and deceitfully deliver to W. J. a servant of him the said B. M. sent by the said B. M. to the said B. C. with the said goods, wares, and merchandises, and who delivered the same to him with a bill and receipt, a certain paper writing purporting to be an order for payment of money, subscribed B. C. purporting to bear date the, &c. and to be delivered to, P. and Q. bankers and partners, by the names and description of, &c. for the payment of 21*l.* 12*s.* to Messrs. R. and M. or bearer, he the said B. C. then and there well knowing the same to be of no value, and that the same would not be paid.* And whereas in truth and in fact,

* It was formerly holden, that drawing a check on a banker, where the party kept no such cash, was merely a lie, but not a false pretence within the statute. *R. v. Lara*, 6 T. R. 545. But now a different doctrine prevails. See *R. v. Jackson*, &c. 3 Campb. 370.—and 2 Russel. C. & M. 1396.

Second count.

the said goods, wares, and merchandize still remain unpaid for, and unsatisfied to the said B. M. To the great damage of the said B. M. In contempt, &c. To the evil, &c. against the peace, &c. and against the statute, &c. And the jurors, &c. that the said B. C. being, &c. (*as in the first count*) on, &c. did go to the shop of the said B. M. at the parish of in the city of L. aforesaid; and then and there, did inform and promise the said B. M. that if he the said B. M. would have the cypher of him the said B. C. engraved upon a pair of candlesticks, &c. which he the said B. M. then showed to the said B. C. for his choice, and would send them the next day to him the said B. C. to his lodgings, at, &c. with a bill and receipt; that he the said B. C. would *pay for them* upon the delivery. And the jurors, &c. that the said B. C. did then and there, (to wit,) on the said day of in the year aforesaid, at the said parish of, &c. in the county aforesaid, deliver to the said W. J. a certain paper writing purporting to be an order for payment of money, subscribed, &c. and purporting to bear date the, &c. and to be directed to P. and Q., bankers and partners, by the names and descriptions of, &c. for the payment of 21*l.* 12*s.* to Messrs. R. and M. or bearer; and then and there unlawfully, knowingly, and designedly, did falsely pretend to the said W. J. that he the said B. C. then kept cash with the said, &c., that they were then his bankers, and that the sum of 21*l.* 12*s.* mentioned in said paper writing, purporting to be an order for payment of money, would be duly paid by them; by means of which said last mentioned false pretence, the said B. C. did then and there, (to wit) at the parish of in the county aforesaid, unlawfully, knowingly, and designedly obtain from the said W. J. one pair of candlesticks, of the value of, &c. aforesaid, the goods, wares, and merchandizes of the said B. M., with intent then and there to defraud him of the same. Whereas in truth and in fact, the said B. C. did not then keep cash with P. and Q., nor were they then his bankers, nor neither was the sum of 21*l.* 12*s.* mentioned in the said paper writing, purporting to be an order for payment of money, duly paid by them, or hath the same, or any part thereof been paid by them or him the

said B. C., or any person, or persons whomsoever. And whereas in truth and in fact, the said B. C. then and there well knew that the said paper writing, purporting to be an order for payment of money was of no value, and was fabricated by him on purpose to cheat and defraud the said B. M.; and that the sum of money therein mentioned would not be paid, to the great damage of the said B. M., and to the great deception of the said W. J., against the peace, &c., and against the form of the statute, &c.

County of } The jurors, &c. That A. B., late For defrauding
 (to wit.) } of, &c. being an evil disposed person, a person by
 and unlawfully and wickedly devising, contriving, and in- selling him
 tending by subtle stratagem and devices, fraudulently and some good
 deceitfully to obtain the monies of one C. D., after the . . . sheep, and af-
 day of which was in the year, &c. (to wit) on, &c., terwards send-
 with force and arms, at the parish aforesaid, in the county ing him others
 aforesaid, unlawfully knowingly, and designedly did falsely instead.
 pretend to him the said C. D., that he the said A. B. would
 deliver unto him the said C. D. or his order, 12 sheep,
 which he the said A. B. then sold to him the said C. D.,
 for, and at the price of 6*l.* 7*s.*; by which said false pre-
 tentences the said A. B. did then and there, (to wit) on the
 same day and year aforesaid, at the parish aforesaid, in the
 county aforesaid, unlawfully, knowingly, and designedly ob-
 tain from the said C. D. the sum of 6*l.* 7*s.*, and of the
 monies of the said C. D., with intent then and there to cheat
 and defraud him of the same; and nine of the said twelve
 sheep did then and there mark by cutting off part of one
 of the ears of each of the said nine sheep; and also by
 marking each of the said nine sheep in the wool on the
 back part of their neck, and he the said C. D. did then and
 there mark the three other sheep by cutting part of the
 wool from off the rump of each of the said sheep. Whereas
 in truth and in fact, he the said A. B. did not deliver to him
 the said C. D., the said twelve sheep so sold to him the said
 C. D. as aforesaid, nor any or either of them; but he the
 said A. B. afterwards, (to wit) on, &c. at, &c. unlawfully,

knowingly, and designedly did deliver to E. D. son of the said C. D., whom he the said C. D. sent for the said twelve sheep, so marked as aforesaid, twelve other sheep of very little value, which he the said A. B. had fraudulently marked and caused to be marked with marks resembling those which he the said C. D. had so, as aforesaid, put upon the said twelve sheep, so sold to him the said C. D. by the said A. B. as aforesaid. To the great damage and deception of the said C. D. in contempt, &c. To the evil and against the statute, &c., and against the peace, &c. [*Here add another count for a fraud at common law.*]

Uttering a false
pass. County of } The Jurors, &c. That A. B., late of,
(to wit.) } &c., and C. D., late of, &c., being evil
disposed persons, and contriving and intending to deceive and impose upon the honest liege subjects of our Lord the King, on, &c., with force and arms, at the parish aforesaid, in the county aforesaid, unlawfully and knowingly did utter and publish to one E. F. as true, a certain false forged and counterfeit paper writing, purporting to be a pass, and to be signed and sealed under the hands and seals of G. H. and T. K., Esqrs. two of his Majesty's justices of the peace, assigned, &c., which said false, forged, and counterfeit paper writing purporting to be a pass is as follows, (that is to say) [*here insert the pass*] by means and colour of which said false, forged, and counterfeit paper writing, purporting to be a pass, they the said A. B. and C. D. did then and there obtain, acquire, and get into their hands and possession, of and from the said E. F., one shilling and sixpence, and him the said E. F. of the said one shilling and sixpence, of the monies of him the said E. F., unlawfully, knowingly, and deceitfully did deceive and defraud. To the great damage of the said E. F. In contempt, &c. To the evil, &c. and against the peace, &c. And

Second count. the Jurors, &c. That the said A. B. and C. D. being, &c., on &c., with force, &c., at, &c., unlawfully did utter and publish as true, a certain, &c. [*here go on and insert the pass as in first count*] with intention by means and

colour of the said false, forged, and counterfeit paper writing, purporting to be a pass, to wander about and impose upon and deceive his Majesty's subjects, by asking objects of them as objects of charity. They the said A. B. and C. D. at the time they uttered and published the said false, forged, and counterfeit pass as true, then and there well knowing the same false, forged, and counterfeited. To the evil, &c. In contempt, &c., and against the peace, &c.

County of } That on, &c. one D. K. then being a
(to wit.) } serjeant in the invalid battalion of the
 Royal Regiment of Artillery of our said Lord the King, For pretending to attesting justice and recruiting serjeant that defendant was not an apprentice, thereby obtaining money to enlist.*
 then and long before was a person in due manner appointed and authorized to enlist persons to serve our said Lord the King as soldiers in the corps of royal military artificers and labourers, and that one S. D. had then lately before enlisted with the said D. K. to serve our said Lord the King as a soldier in the said corps of, &c. and the said S. D., on, &c. at, &c. in order to be attested, pursuant to the statute in that case made and provided, did in his proper person appear before H. L. esquire, then being one of the justices of our said Lord the King, assigned, &c. And the jurors, &c. do further present, that the said S. D. late of, &c. being an evil disposed person, and contriving and intending to cheat and defraud the said D. K. of his monies, and to make it be believed that the said S. D. was at liberty, and eligible to be enlisted to serve our said Lord the King as a soldier in the corps of, &c. on the said, &c. with force and arms, at, &c. aforesaid, unlawfully, knowingly, and designedly, did falsely pretend to the said H. L. (he the said H. L. then and there being such justice as aforesaid, and then and there having sufficient and competent power and authority to attest persons to serve the said Lord the King as soldiers in the said corps of, &c.) that he the said S. D. was not then an apprentice (meaning that the said S. D. then and there, to

* Starkie, 474.

2nd, 3rd, and
4th count.

wit, on the said, &c. at the said, &c. when he so appeared before the said H. L. the justice aforesaid, in order to be attested as aforesaid, was not an apprentice, and that he the said S. D. was then and there at liberty and eligible to be enlisted to serve our said Lord the King as a soldier in the said corps,) by means of which said false pretence he the said S. D. unlawfully, knowingly, and designedly, did obtain from the said D. K. the sum of —l. of the proper monies of the said D. K. with intent to cheat and defraud the said D. K. of the same. Whereas in truth and in fact the said S. D. on the said, &c. at, &c. aforesaid, at the time when he so appeared before the said H. L. the justice aforesaid, in order to be attested as aforesaid, was an apprentice, and was not at liberty and eligible to be enlisted to serve our said Lord the King as a soldier in the said corps, and whereas in truth and in fact, the said S. D. was then, to wit, on, &c. an apprentice to G. O., and whereas in truth and in fact, the said S. D. was not then, to wit, on, &c. at, &c. at liberty and eligible to be enlisted to serve our said Lord the King as a soldier in the said corps, to the great damage, &c. [Second count like first only laying the money to be the King's, and with intention to defraud him. Third count not so full and stating the pretence to be made to the serjeant, and obtaining the money from him with intent to defraud him. Fourth count, same as third, only stating the money to be the King's with intent to cheat his Majesty.]

Against a mem-
ber of a bene-
ficial club or
society, for
obtaining mo-
ney belonging
to the rest of
the members,
under false
pretences.

County of } That on, &c. at, &c. certain persons
(to wit.) } united together and formed themselves
into a certain lawful and beneficial club, or society, called,
&c. (as the name may be,) under certain printed ar-
ticles, rules, orders, or regulations, made for the good
order and government of the said club or society, (which said
articles, rules, &c. were afterwards, to wit, at the general
quarter sessions of the peace, holden at in the
county of aforesaid, duly exhibited, confirmed, and
filed, according to the statutes in such case made and pro-
vided,) and then and there, and on divers other days and
times between that day and the third of May, in the twenty-

ninth year, &c. contributed and paid divers large sums of money, amounting in the whole to a large sum of money, to wit, the sum of one hundred pounds and upwards, of lawful money into the said club or society, and deposited the same in a certain box, left in the dwelling-house of one T. R., at K. aforesaid, commonly called or known by the name or sign of, &c. *[as it may be,]* and there kept for the use, benefit, and advantage of the members of the said club or society for the time being. And the jurors, &c. do further present, that in and by a certain article of the said rules and orders of the said club or society, it is declared, ordered, and agreed, that, &c. *[here recite the article relating to the payment of money towards the funerals of the members' wives.]* And the jurors, &c. that on the same day and year last aforesaid, at, &c. aforesaid, one L. P. late of, &c. one A. B. and C. D., &c. *[here insert the rest of the members' names which appear by the club-book to be existing at this time,]* were members of the said club or society, contributing and paying money into and for the use of the said club or society, that is to say, for the general benefit and advantage of all the members thereof at the said house of the said T. R., for the purpose, amongst other things, mentioned, declared and contained in the said article above-mentioned and set forth. And the jurors, &c. do further present, that on, &c. last aforesaid, at, &c. aforesaid, a large sum of money, to wit, the sum of one hundred pounds, *[this need not be the exact sum, let it be something under the sum contained in the box at this time,]* of like lawful money was and remained in the said box, kept for the purpose in that behalf aforesaid, in the said house of the said T. R., there before then deposited therein, by and for, and on the behalf of all the members of the said club or society. And the jurors, &c. do further present, that by the assent and concurrence of all the members of the said club or society, it had been usual and customary during all the time aforesaid, (except the nights on which the said club or society had been there holden,) for the members of the said club or society, having a right or occasion to withdraw, or receive any money to which they had been entitled by the

articles, rules and orders of the said club or society, from and out of the said box, to apply to the said T. R. for the payment of the same, upon condition that he the said T. R. should be repaid the same from and out of such money contained in the said box, for the purpose in that behalf aforesaid, on some subsequent night on which the said club or society should be holden at the said house of him the said T. R. at K. aforesaid. And the jurors, &c. that the said L. P. well knowing all and singular the premises aforesaid, on, &c. with force and arms, at, &c. aforesaid, unlawfully, knowingly, and designedly, did falsely pretend to the said T. R. that the wife of him the said L. P. was then dead, and that he the said L. P. then wanted thirty shillings to bury his said wife, by means of which said false pretences he the said L. P. then and there unlawfully, knowingly, and designedly, did obtain of and from the said T. R. the said sum of thirty shillings, with intent then and there to cheat and defraud the said A. B., C. D., &c. [*the other members of the club,*] of the same, whereas in truth and fact, the wife of him the said L. P. was not dead at the said time he so made the false pretences to the said T. R. as aforesaid, and whereas in truth and in fact, he the said L. P., at the time of the false pretences, did not want the said sum of thirty shillings, or any sum of money whatsoever, for the purpose of burying his wife, or any person whatsoever, having then lately been the wife of him the said L. P. to the great damage, &c. as in others,

For obtaining
more than the
sum due for
carriage of a
parcel by pro-
ducing a false
ticket.*

County of } That A. B. late of, &c. on, &c.
(to wit.) } at, &c. having in his custody and pos-
session a certain parcel to be by him delivered to Maria

* It has been holden, that a *basket* is sufficiently described as a *parcel* within the statute. It was also holden, that if money, (as in this case,) be obtained from the servant, who had money of his master in hand at the time, it may be well laid to be the property of the *latter*; but if he had not money enough of his employer in his hands at the time, such master cannot be stated to be the person defrauded. 1 Campb. 212. & ante, p. 263.

Countess Dowager of Ilchester, upon the delivery of which he was authorized and directed to receive and take the sum of 6s. and 6d. and no more, for the carriage and portorage of the same; yet, that the said A. B. produced and delivered to T. H. then being servant to the said countess of I. the said parcel, together with a certain false and counterfeit ticket, made to denote that the sum of nine shillings and ten-pence was charged for the carriage and portorage of the said parcel, and unlawfully knowingly and designedly, did falsely pretend to the said T. H., that the said false and counterfeit ticket was a just and true ticket, and that the said sum of nine shillings and ten-pence had been charged and was due and payable for the carriage and portorage of the said parcel, and that he the said A. B. was authorised and directed to receive and take the said sum of nine shillings and ten pence for the carriage and portorage of the said parcel, by means of which said false pretences defendant did unlawfully, knowingly and designedly, obtain of and from the said T. H. the sum of three shillings and four-pence, of the monies of the said countess, with intent to cheat and defraud her of the same, whereas in truth and in fact, &c. [*Negative the pretences and conclude "to the damage, &c." as in others.*]

County of } That before and at the time of the Indictment for
 (to wit.) } committing of the offence hereinafter obtaining two
 next mentioned, that is to say, on, &c. at, &c. one bills of ex-
 G. R. was lawfully possessed of and had in his hands and change under
 possession certain securities for the payment of money, pretence of
 that is to say, two bills of exchange, one of the said getting same
 bills of exchange being for the payment of the sum of discounted for
 one hundred pounds, and the other of the said bills of ex- the prosecutor.
 change being for the payment of the sum of three hundred See 52 Geo. 3,
 and fifty pounds. And the jurors, &c. do further present, c. 64. which
 that H. B. late of the said, &c. being an evil disposed per- extends to
 30 Geo. 1.
 c. 24. to choose
 in action.*

* As the offence is created by one statute, and the punishment imposed by another, the indictments should conclude against the statutes.
 (2 Chit. C. L. 1020.)

son, and well knowing the premises, on the said, &c. at, &c. aforesaid, falsely, fraudulently, deceitfully, unlawfully, knowingly and designedly, did pretend to the said G. R., that he the said H. P. could immediately get the said bills of exchange discounted by a friend of him the said H. P. at the India house, and would pay over the proceeds thereof to him the said G. R. by means of which said false pretences he the said H. P. did then and there unlawfully, knowingly, and designedly, obtain of and from the said G. R. the said bills of exchange (the same bills of exchange then and there being the property of the said G. R., and the said sums of money payable and secured by and upon the said bills of exchange then and there being due and unsatisfied to the said G. R. the proprietor thereof with intent to cheat and defraud the said G. R. of the said several bills of exchange. Whereas in truth and in fact, he the said H. P., at the time of making the said false pretences, well knew that he could not get the said bills of exchange discounted by any friend of him the said H. P. at the India house, and whereas in truth and in fact, at the time of the making the said false pretences as aforesaid, he the said H. B. well knew that he was utterly unable to discount, or get discounted, the said bills of exchange for the said G. R., and whereas in truth and in fact, at the time of making the said false pretences as aforesaid, he the said H. P. did not intend to discount, or to get discounted, the said bills of exchange for the use of the said G. R., or to pay over the proceeds of the said bills of exchange to the said G. R., but on the contrary then and there intended fraudulently to cheat and defraud the said G. R. of the same, to the great damage of the said G. R., to the evil example, &c. and against the peace, &c. and against the form of statutes in such case made and provided. [*Add a second count the same as first only stating the false pretence to be that defendant would get said bills discounted and immediately pay over the proceeds thereof to the prosecutor.*]*

COMPOUNDING.*

County of } The jurors, &c. that one A. B. For compound-
 (to wit.) } on the day of in the ing a felony.
 year of the reign of our Sovereign Lord, &c. with
 force and arms, at the parish of in the county of
 one silver spoon of the value of of the goods
 and chattels of one C. D. then and there being found, feloniously did steal, take, and carry away, against the peace of our said Sovereign Lord, &c. his crown and dignity; and the person aforesaid, upon, &c. do further present, that the said C. D. late of the parish of in the county aforesaid, yeoman, well knowing the premises, but unlawfully and unjustly contriving and intending to prevent the due course of law in this behalf, and to procure the said A. B. to escape with impunity afterwards, to wit, on the same day and year last aforesaid, of the parish aforesaid, in the county aforesaid, unlawfully and unjustly, and for the sake of wicked lucre, did compound the said felony, and did then and there exact, receive, and have of C. D. five pounds in monies numbered for compounding the said felony, and as a reward to favour and not prosecute the said C. D. for the felony aforesaid, to the great prevention and hindrance of public justice, in contempt, &c. to the evil example, &c. and against the peace, &c.

County of } That one A. B. heretofore, to wit, For compound-
 (to wit.) } on, &c. prosecuted out of the court of ing an offence
 our said Lord the King, before the King himself, the same against a penal
 court then being at, &c. a certain writ of our said Lord the statute.
 King, called a latitat, against one C. D. directed to the
 sheriff of W. reciting that, &c. [*here recite the*
writ] and the jurors, &c. do further present, that the said
 writ so sued out as aforesaid, by the said A. B. was by him

* The offence of compounding felony was formerly holden to constitute the party thus offending an accessory to the original crime. 4 Black. Com. 134. It is now considered a high misdemeanor, and punishable by fine and imprisonment. 1 Hale, 846. 4 Black. Com. 136.

sued out with intent to declare against the said C. D. in the same court in a certain plea of debt for a certain penalty supposed to have been incurred by the said C. D. by reason of his the said C. D. having before that time caused a certain waggon of him the said C. D. drawn by more than four horses, to wit, eight horses, to travel and pass upon a certain turnpike road in the parish of H. in the said county of W. the fellies of the wheel of the same waggon, at the time the same so passed along the same road, being of less breadth and gage than three inches from side to side, against the form of the statute in such case made and provided. And the jurors, &c. do further present, that the said A. B. late of, &c. being a person of an evil disposed mind, and not regarding the statute in that case made and provided,* on, &c. at the said, &c. unlawfully and for wicked gain's sake, did take upon himself to compound and agree with the said C. D. for the said offence without the order or consent of the said court† of our said Lord the King before the King himself, out of which same court the said writ against the said C. D. was so sued out as aforesaid, and then and there did exact, receive and have of and from the said C. D. a large sum of money, to wit, five pieces of gold coin, of the proper coin of this kingdom, called guineas, of the value of 5*l.* 5*s.* of lawful money of Great Britain as and for a reward of compounding with the said C. D. for the said offence, and desisting from further prosecuting his said suit, against the form, &c. and against the peace, &c. And the jurors, &c. further present, that the said A. B. being an evil disposed person and disregarding the statute in that case made and provided on the said, &c. at the said, &c. by colour and pretence of

Second count.

* The 18 Eliz. c. 5., by which compounding an information or suit commenced in any of his Majesty's Courts at Westminster, is made highly penal, and subject to infamous punishment. It has been lately determined, that this statute applies only to *such* informations and suits and not to informations before magistrates, in which no suit has been commenced in the superior Courts. *R. v. Crisp*, H. 58 Geo. 3.

† With leave of the court it may be done, but the King's half of the composition must first be paid. *Wood v. Ellis*, 2 Black. R. 1154.

a certain process before that time by him taken out and prosecuted at the court of our said Lord the King before the King himself, against the said C. D. for and on account of a certain offence supposed to be committed by the said J. B. in this, to wit, that the said C. D. had before that time caused a certain waggon of him the said C. D. drawn by more than four horses, to wit, by five horses, to travel and pass upon a certain turnpike road in, &c. the fellies of the wheels of the same waggon, at the time the same so passed along the said road, being of less breadth and gage than nine inches, from side to side, contrary to a certain statute in that case made and provided, he the said A. B. unlawfully and for wicked gain's sake, did take upon himself to make composition with the said C. D. for the said last-mentioned offence, and did then and there take and receive of and from the said C. D. a large sum of money, to wit, five pieces of gold coin of the proper coin of this kingdom, called guineas, of the value of 5*l.* 5*s.* of lawful money of Great Britain as and for a reward for his the said A. B.'s desisting and forbearing to prosecute the said C. D. for the said last-mentioned offence without the order and consent of any of our said Lord the King's courts at Westminster, for that purpose had and received, against the form of the statute in that case made and provided, and against the peace, &c. And the jurors, &c. further present, that the said A. B. being an evil disposed person, and disregarding the statute in that case made and provided, on the said, &c. at the said, &c. upon colour and pretence of the said C. D. having committed a certain offence against a certain penal law in this, to wit, that the said C. D. had before that time caused a certain waggon of him the said C. D. drawn by more than four horses, to wit, by five horses, to travel and pass upon a certain turnpike road in, &c. aforesaid, the fellies of the wheels of the same waggon at the time the same so passed along the same road being of less breadth and gage than nine inches from side to side, contrary to a certain statute in that case made and provided, did unlawfully and for wicked gain's sake, and without the order and consent of any of our said Lord the

Third count.

King's courts at Westminster, take upon himself to make composition with the said C. D. for the said supposed offence last-mentioned, and did then and there take and receive of the said C. D. a large sum of money, to wit, ten pieces of gold coin of the proper coin of this kingdom, called guineas, of the value of 10*l.* 10*s.* of lawful money of Great Britain as and for a reward for his the said T. N.'s forbearing to prosecute the said T. B. for the said last-mentioned supposed offence, against the form, &c. and against the peace, &c.

Another for
taking money
to compound
a *qui tam*
action.

County of } That O. P. &c. being an evil disposed
(*to wit.*) } person, and not regarding the statute
in such case made and provided, nor fearing the pains and penalties therein contained, heretofore, to wit, on, &c. with force and arms at, &c. upon and by colour and pretence of a certain matter of offence, then and there pretended to have been committed by one Q. R. against a certain penal law, i. e. by and upon colour and pretence that the said Q. R. being a person vending and exposing to sale foreign and British lace, had not caused the words "dealer in Foreign and British lace," to be painted or written in large or legible characters over the door of the said shop, but had neglected so to do, against the form of a certain statute made and passed in the forty-fourth year of the reign of his present Majesty, entitled an act, &c. [*here set forth the title of the act,*] unlawfully, wilfully and corruptly did compound and agree with the said Q. R. who was then and there surmised to have offended against the same statute in manner aforesaid, for the said pretended offence, and did thereupon then and there take of and from the said Q. R. a certain sum of money, to wit, the sum of . . *l.* of lawful, &c. as and by way of composition for the said pretended offence, and in order to prevent an information from being laid against the said Q. R. for the same, without the consent of any of his Majesty's courts at Westminster, and without any lawful authority for so doing, to the great hindrance and obstruction of public justice, in contempt, &c. to the evil example, &c. against the form, &c. and against the peace, &c.

CONSPIRACY.*

County of } The jurors for our Lord the King } General form
 (to wit.) } upon their oath present, that A. B., late of an indictment for con-
 of, &c. [*here state the names and additions of all the de- spiracy.*
fendants,] being persons of evil minds and dispositions,
 on, &c. with force and arms, at, &c. [*the venue,*]† un-
 lawfully and wickedly [*or if the conspiracy be malicious,*
say, "falsely and maliciously"] did conspire, combine, con-
 federate, and agree together, ‡ to [*here state the object of the*
conspiracy, as in the following precedents.] And the jurors
 aforesaid, upon their oath aforesaid, do further present, that
 the said A. B., &c. in pursuance of and according to the
 said conspiracy, combination, confederacy, and agreement
 between them the said A. B., &c. as aforesaid had, did, § on,
 &c. at, &c. [*the place where the overt act took place,*] [*here set*
out the overt acts of conspiracy,] to the great damage of, &c.
 [*the party immediately injured,*] to the evil example of all
 others, and against the peace of our said Lord the King, his

* The crime of conspiracy, according to its modern interpretation, may be of two kinds, viz. against the public, or against individuals. Those of the former description are again divisible into conspiracies at common law, and conspiracies by statute, such as combinations among workmen to raise wages. Those of the latter are too numerous, and of too great variety, to be comprised within any catalogue admissible here. Suffice it, therefore, to observe, in general terms, that conspiracies against the public may be such as injure public trade, endanger public health, violate public morals, insult public justice, or infringe upon public police: those against individuals may be nearly, and with few exceptions, (13 E. R. 228.) every thing which has a direct tendency to injure them in property, person, or character, contrived or carried on by means of a confederacy. Under a head or title so comprehensive, a proper selection of precedents must necessarily be peculiarly arduous. Such only have been chosen as the compiler's judgment deemed most generally useful at country sessions.

† The venue must be laid where the conspiracy is entered into, not where it takes effect. 1 Ld. Raym. 370.

‡ The fact of conspiracy need not be proved, but may be inferred from circumstances. 1 Black. R. 392.

§ The conspiracy is the gist of the indictment, and is itself a consummate offence; therefore it is not necessary that any act should have been done in consequence of it, or that any one was actually aggrieved. 1 Leach, 39.

crown, and dignity. [*Add a second count, stopping at the statement of the conspiracy, omitting the overt acts, and concluding as above.*]

Indictment at
common law
for a conspi-
racy among
workmen to
raise their wa-
ges and lessen
the time of la-
bour.

County of } That A. B., late of, &c. [*and others,*
(*to wit.*) } *setting out all their names and additions,*
on, &c. in the year of the reign of our Sovereign
Lord George the Third, &c. being workmen and jour-
neymen in the art, mystery, and manual occupation of a
wheelwright, and not being content to work and labour
in that art and mystery by the usual number of hours in
each day, and at the usual rates and prices for which they
and other workmen and journeymen were wont and ac-
customed to work, but falsely and fraudulently conspiring
and combining unjustly and oppressively to increase and
augment the wages of themselves and other workmen and
journeymen in the said art, and unjustly to exact and extort
great sums of money for their labour and hire in their said
art, mystery, and manual occupation from the masters who
employ them therein, on the same day and year, at, &c.
aforesaid, together with divers other workmen and journeymen
in the same art, mystery, and manual occupation,
whose names to the jurors aforesaid, are as yet unknown,
unlawfully did assemble and meet together, and so being
assembled and met, did then and there unjustly and cor-
ruptly conspire, combine, confederate, and agree among
themselves, that none of the said conspirators after the same
. day of would work at any lower or lesser rate
than five shillings for hewing of every hundred of spokes
for wheels, and eight shillings for making of every pair of
hinder wheels, for and or on account of any master or em-
ployer whatsoever in the said art, mystery, and occupation,
and also that none of the said conspirators would work day
work, or labour any longer than from the hour of six in the
morning till the hour of seven in the evening in each day,
from thenceforth, to the great damage and oppression not
only of their masters employing them in the said art, mys-
tery, and manual occupation, but also of divers others of

his Majesty's liege subjects; to the evil example, &c. and against the peace, &c.

County of } That T. B., late of, &c. [*setting out* For a conspi-
 (to wit.) } *all the names and additions,*] together racy by jour-
 with divers other evil disposed persons, to the number neymen manu-
 of one thousand and more, whose names are to the facturers to
 jurors aforesaid as yet unknown, on, &c. with force and raise the price
 arms, at, &c. being workmen and journeymen in the of labour, pre-
 art, mystery, and manual occupation of weavers, and vent others
 not being content to work and labour in that art and open a prison.
 mystery at the usual rates and prices for which they and Second count
 other such workmen and journeymen had been wont and for the riot,
 accustomed to work, but unlawfully devising and intending &c.
 unjustly and oppressively to augment and increase the wages
 of themselves and other workmen and journeymen in the
 said art, mystery, and manual occupation, and unlawfully
 and unjustly to exact and extort great sums of money for
 their labour and hire in the said art, mystery, and manual
 occupation, from the masters who employed them therein,
 did unlawfully, unjustly, and corruptly combine, conspire,
 consult, consent, and agree among themselves to demand,
 exact, and obtain for themselves and other workmen and
 journeymen in the said art, mystery, and manual occupation
 from the masters who employed them therein, greater wages,
 hire, and reward for their labour and work as such work-
 men and journeymen, than the usual and customary wages,
 hire, and reward, then usually paid for their labour and
 work as such workmen and journeymen by the masters who
 employed them as such workmen and journeymen in the
 said art, mystery, and manual occupation. And the jurors,
 &c. do further present, that in pursuance of the said con-
 spiracy, combination, and agreement, and in order to carry
 their said intentions into effect, the said T. B., &c. with the
 said other evil disposed persons, whose names are to the said
 jurors as yet unknown, did then and there, and for a long
 time before and afterwards, desist from, and totally leave
 and refuse to continue their labour and work as such work-

men and journeymen, and did then and there and on divers other days and times, as well before as afterwards, in a violent and tumultuous manner meet and assemble together, at, &c. aforesaid, and divers other places, and also then and there and on divers other days, as well before as after, go about from place to place and to the warehouses and workshops of divers masters and persons employing such workmen and journeymen in the said art, mystery, and manual occupation, and particularly to the warehouse and workshop of one D. R. and one H. R., being masters and persons as aforesaid, with intent and in order to alarm and terrify the said D. R. and H. R., and other such masters and employers, and by threats and menaces to cause and procure the said D. R. and H. R., and other such masters and employers, to give greater wages, hire, and reward to such workmen and journeymen for their labour and work as such workmen and journeymen than the usual and customary wages, hire, and reward, then usually paid for their labour and work as such workmen and journeymen by the masters who employed them as such journeymen and workmen in the said art, mystery, and manual occupation, and did then and there cause and procure, and compel divers such workmen and journeymen to leave and desist from the work and labour in which they were respectively employed as such workmen and journeymen, and did then and there with force and arms, seize, take, and carry away from divers workmen and journeymen in the said art, mystery, and manual occupation, divers shuttles of and belonging to such workmen and journeymen respectively, and by them respectively used in their work and labour as such workmen and journeymen, and did also then and there, and on divers other days, as well before as after, unlawfully, riotously, and tumultuously assemble and gather themselves together, at, &c. aforesaid, and divers other places in the said county, and remain and continue together for divers long spaces of time, to wit, the space of twelve hours each of the said days, and during all those times make divers great riots, routs, tumults, and disturbances, to the great terror of all the liege and peaceable subjects of our

said Lord the King; to the great damage and oppression not only of the masters employing them and other workmen and journeymen in the said art, mystery, and manual occupation, but also of divers other liege subjects of our said Lord the King; in contempt of our said Lord the King and his laws, and against the peace, &c. [*Second count for the riot, &c. only.*]

County of } That T. B., late of, &c. and T. D., Against master shoemakers for a conspiracy not to employ journeymen shoemakers who had left their last master without his consent.
 (to wit.) } late of, &c. being evil disposed persons, and contriving and unlawfully, wickedly, and maliciously intending to injure, prejudice, and aggrieve divers good and worthy subjects of this realm, being respectively journeymen shoemakers, and to deprive them of the means of their livelihood, heretofore, to wit, on, &c. at, &c. aforesaid, did unlawfully conspire, combine, and confederate and agree together, and to and with divers other persons to the jurors aforesaid as yet unknown, being respectively master shoemakers, that they would not, nor would either of them retain or employ any journeymen, who should leave their respective services without the consent of the person or persons they might have last worked for. *And the jurors, &c. do further present, that in pursuance of the said conspiracy, combination, confederacy, and agreement, between the said T. B. and T. D. so as aforesaid had, the said T. B. and T. D. afterwards, to wit, on, &c. aforesaid, at, &c. aforesaid, did respectively refuse to retain and employ O. P., Q. R., &c. being then and there respectively journeymen shoemakers, and who had before then respectively left the service of W. X., Y. Z., &c. for whom they had last worked, without the consent of the said W. X., Y. Z., &c. for and on account of their having left such service as aforesaid; to the great damage, &c. in contempt, &c. to the evil example, &c. and against the peace, &c. [Second count, leaving out all in Italics.]*

County of } The jurors, &c. that A. B., late of, &c. Conspiring and procuring two paupers to be married, in or-
 (to wit.) } yeoman, C. D., late of, &c. yeoman, E. F.,
 late of, &c. yeoman, and G. H., late of, &c. yeoman, being

der to charge a
foreign parish
with the main-
tenance of the
woman.

persons of wicked minds and dispositions, and of dishonest conversations (and the said A. B., C. D., and E. F., being overseers of the poor of the said parish of St. M. N., in the said county of S.,) wickedly and maliciously devising and intending unlawfully and unjustly to aggrieve and oppress the inhabitants of the parish of M., in the said county of S., and also to subject the said inhabitants of the said parish of M. with the burthen and maintenance of one E. W., single woman, she the said E. W. not having any legal place of settlement within the said parish of M., but then being a poor impotent person, and an inhabitant legally settled in the said parish of St. M. N., on the day of in the year of the reign, &c. at the said parish of St. M. N., in the said county of S., unlawfully, wickedly, and maliciously did among themselves combine, conspire, confederate, and agree to cause and procure one E. H., a poor impotent person, and an inhabitant legally settled in the parish of M. aforesaid, in the county of S., and the said E. W., of the said parish of St. M. N., in the county of S., single woman, to be married, they the said A. B., C. D., E. F., and G. H., then and there well knowing and each of them well knowing the said E. H. to be a poor impotent person, and an inhabitant legally settled in, and then chargeable to the said parish of M., in the said county of S., and also then and there well knowing, and each of them well knowing, that the said E. W. was a poor impotent person, and an inhabitant legally settled in, and then chargeable to, the said parish of St. M. N., in the same county; and that they the said A. B., C. D. being such persons as aforesaid, and then and there well knowing, and each of them well knowing, the premises aforesaid, afterwards, to wit, on the said day of in the year of the reign of our said Lord the King, at the parish of St. M. N., in the said county of S., that is to say, in the workhouse of the said parish, in further prosecution of the said most unlawful, wicked, and malicious devices and intentions of them the said A. B., C. D., E. F., and G. H., and in pursuance of and according to the said unlawful, wicked, and malicious combination, conspiracy, con-

federacy, and agreement between them the said A. B., C. D., E. F., and G. H. as aforesaid, before had, did unlawfully, wickedly, and maliciously, solicit and persuade the said E. W. to marry and take to be her husband, him the said E. H.; and the better to induce the said E. W. to marry and take to be her husband him the said E. H., did promise that they, the said A. B. and C. D., would give unto them the said E. W. and E. H. money to buy some furniture with. And that they the said A. B., C. D., E. F., and G. H. afterwards, to wit, on the said day of in the year aforesaid, at the said parish of St. M. N., in the said county of S., in further prosecution of the said most unlawful, wicked, and malicious devices and intentions of them the said A. B., C. D., E. F., and G. H., and in pursuance of and according to the said unlawful, wicked, and malicious combination, conspiracy, confederacy, and agreement between them so as aforesaid before had, did unlawfully, wickedly, and maliciously solicit and persuade the said E. H. to marry and take to be his wife the said E. W.; and the better to induce the said E. H. to marry and take to be his wife the said E. W., they, the said A. B., C. D., E. F., and G. H. did then and there propose to and promise him the said E. H. that they the said A. B., C. D., E. F., and G. H. would give unto him the said E. H. two guineas (meaning two pieces of gold coin, of the proper coin of this realm, called guineas, of the value of two pounds and two shillings,) to buy goods with. And that they the said A. B. and C. D. afterwards, to wit, on the said day of in the aforesaid, in further prosecution of the said most unlawful, wicked, and malicious devices and intentions of them the said A. B., C. D., E. F., and G. H., and in pursuance of and according to the said unlawful, wicked, and malicious combination, conspiracy, confederacy, and agreement between them and the said E. H. and E. W., so as aforesaid before had, did unlawfully procure and obtain, and cause to be procured and obtained, a license for the marriage of them the said E. H. and E. W. And the jurors aforesaid, &c. that the said A. B. and C. D. afterwards, to wit, on the said day of in the year

aforesaid, at the said parish of St. M. N., in the said county of S., in order to accomplish, perfect, and bring to effect the said most unlawful, wicked, and malicious devices and intentions of them the said A. B., C. D., E. F., and G. H., and in pursuance of and according to the said unlawful, wicked, and malicious combination, conspiracy, confederacy, and agreement between them the said A. B., C. D., E. F., and G. H. so as aforesaid before had, did unlawfully cause and procure them the said E. H. and E. W. to be married; and that they the said E. H. and E. W. were then and there married. And that they the said A. B., C. D., E. F., and G. H. did then and there provide for, and give unto them the said E. H. and E. W. a dinner as a recompence to the said E. H. and E. W. for their being so married, as aforesaid, and afterwards, to wit, on the day of in the year, aforesaid, they the said A. B., C. D., E. F., and G. H., in pursuance of and according to the said unlawful, wicked, and malicious combination, conspiracy, confederacy, and agreement between them so as aforesaid, before had, at the parish of St. M. N. aforesaid, in the said county of S. did give unto them the said E. H. and E. W. two pieces of gold coin, of the proper coin of this realm, called guineas, of the value of two pounds and two shillings, as a further recompence to them the said E. H. and E. W. for their being so married as aforesaid. And the jurors, &c. that by reason and means of the said unlawful, wicked, and malicious combination, conspiracy, confederacy, and agreement between them the said A. B., C. D., E. F., and G. H. so as aforesaid, before had, and of the said premises in pursuance thereof, the said E. W. hath become and now is chargeable to the said inhabitants of the said parish of M., whereby the said inhabitants are, and still are put to a very great expence in relieving and maintaining of the said E. W. to the great damage of the said inhabitants of the said parish of M. in contempt, &c. to the evil, &c. and against the peace, &c.

Second count. And the jurors, &c. that the said A. B., C. D., E. F., and G. H. being persons of wicked, &c. [as in the first count to the conspiracy,] combine, conspire, confederate, and agree

to cause and procure the said E. H. a poor impotent person, and an inhabitant legally settled in the parish of M. aforesaid, in the said county of S. to marry and take to be his wife the said E. W. of the said parish of St. M. N. in the said county of S., single woman; they the said A. B., C. D., E. F., and G. H., then and there well knowing, &c. [*as in first count,*] and that they the said A. B., C. D., E. F., and G. H., being such persons afterwards, to wit, on the said day of in the said year of the reign of our said Lord the King, at the said parish of St. M. N. in the county of S. in further prosecution of the said last mentioned wicked and malicious devices, and intentions of them the said A. B., C. D., E. F., and G. H., and in pursuance of, and according to the said last mentioned unlawful, wicked, and malicious combination, conspiracy, confederacy, and agreement between them, so as aforesaid, before had, did unlawfully, wickedly, and maliciously, solicit and persuade the said E. H. to marry, and take to be his wife the said E. W. and the better to induce the said E. H. to marry and take to be his wife the said E. W., they the said A. B., C. D., E. F., and G. H., did then and there propose to and promise him the said E. H. that they the said A. B., C. D., E. F., and G. H., would give unto him the said E. H. two guineas, (meaning two pieces of gold coin of the proper coin of this realm, called guineas, of the value of two pounds and two shillings,) to buy goods with, and that they the said A. B. and C. D. afterwards, to wit, on the said day of in the year aforesaid, in further prosecution of the said most unlawful, wicked, and malicious devices, and intentions of them the said A. B., C. D., E. F., and G. H., and in pursuance of and according to the said last mentioned unlawful, wicked, and malicious combination, conspiracy, confederacy, and agreement between them the said A. B., C. D., E. F., and G. H., so as aforesaid, before had, did unlawfully procure and obtain, and cause to be procured and obtained, a licence for the marriage of him the said E. H. to and with her the said E. W. And the jurors, &c. that the said A. B. and C. D. afterwards, to wit, on the said day

of in the year aforesaid, at the said parish of St. M. N. in the said county of S., in order to accomplish, perfect, and bring to effect, the said last mentioned most unlawful, wicked, and malicious devices, and intentions of them the said A. B., C. D., E. F., and G. H., in pursuance of, and according to the said last mentioned unlawful, wicked, and malicious combination, conspiracy, confederacy, and agreement between them and the said E. H. and E. W. so as aforesaid, before had, did unlawfully cause and procure him the said E. H. to be married to and with her the said E. W. and that they the said E. H. and E. W. where then and there married; and that they the said A. B. and C. D. did then and there provide for, and give unto them the said E. H. and E. W. a dinner as a recompence to the said E. H. for so marrying, and taking to be his wife the said E. W. as aforesaid, and afterwards, to wit, on the day of in the year aforesaid, they the said A. B., C. D., E. F., and G. H., in pursuance of, and according to the said last mentioned unlawful, wicked, and malicious combination, conspiracy, confederacy, and agreement between them, so as aforesaid, before had, at the parish of St. M. N. in the said county of S. did give unto them the said E. H. one piece of gold coin, of the proper coin of this realm, called a guinea, of the value of twenty one shillings, as a further recompence to him the said E. H. for so marrying, and taking to be his wife the said E. W. as aforesaid. And the jurors, &c. that by reason and means of the said last mentioned unlawful, wicked, and malicious combination, conspiracy, confederacy, and agreement between them the said A. B., C. D., E. F., and G. H., so as aforesaid, before had, and of the said last mentioned premises, in pursuance thereof the said E. W. hath become, and now is, chargeable to the said inhabitants of the said parish of M. whereby the said inhabitants were and still are put to a very great expence in relieving and maintaining of the said E. W. to the great damage of the said inhabitants of the parish of M. in contempt, &c. to the evil and pernicious, &c. and against the peace, &c. [*A third count for soliciting*

and procuring the woman to marry the man; and a fourth count for a conspiracy only.]

County of } The jurors, &c. That A. B., late of
 (to wit.) } the parish of F., in the county of M.,
 yeoman, C. D., late of the same place, yeoman, overseers
 of the poor of the said parish of F., and G. H., late of the
 same place, yeoman, being persons of evil name and fame,
 and of dishonest conversation, and wickedly devising and
 intending unjustly to aggrieve the inhabitants of the parish
 of T., in the said county of M.; and also to subject the said
 inhabitants of the said parish of T. to the burthen and main-
 tenance of K. L., widow, she the said K. L. then being
 resident in the said parish of F., in the said county of M.;
 and then having no legal place of settlement in the said
 parish of T., on the day of in the year
 of the reign of our Sovereign Lord George the now
 King of Great Britain, &c., at the parish of F. aforesaid,
 in the county of M. aforesaid, between themselves did cons-
 pire, combine, and agree to force and compel the said K.
 L. to go out of the said parish of F., in the county afore-
 said, to the said parish of T. in the same county, she the
 said K. L. then being poor and impotent, and unable to
 maintain herself, and there not having any legal settlement
 within the the said parish of T., and then being pregnant
 and near the time of her travail, and then and there having
 the pains of labour on her; and that they the said A. B.,
 C. D., and G. H., then and there well knowing the same,
 in order the sooner to perfect and bring to effect their said
 most unlawful and wicked combination, conspiracy, and
 agreement between them as aforesaid had, did then and
 there by threats force, oblige, and compel her the said K.
 L. to go out of the said parish of F., in the said county of
 M. to the said parish of T. in the same county, and there
 to be kept and maintained at the charge and expence of
 the inhabitants of the said parish of T.; and that she the
 said K. L. by reason of the threats of them the said A. B.,
 C. D., and G. H. as aforesaid, did then and there go from

Against over-
 seers for con-
 spiracy and
 compelling an
 impotent wo-
 man in labour
 to go out of one
 parish into ano-
 ther in order
 to make her
 chargeable to
 the said pa-
 rish.

and out of the said parish of F., in the said county of M., to the said parish of T. in the same county. And afterwards, (to wit) on the day of in the year aforesaid, she the said K. L., at the parish of T. aforesaid, in the county aforesaid, was delivered of a male child in the workhouse, and there by reason and means whereof the inhabitants of the said parish of T. were then and there obliged to maintain and provide for the said K. L. and the said male child, so born as aforesaid; and were then and there put to great charge and expence, to the great danger of the life of the said K. L., to the great damage of the said inhabitants of the said parish of T., to the evil and pernicious example of all others in the like case offending, in contempt of our said Lord the King, and also against the peace of our said Lord the King, his crown and dignity.

For removing a female bastard child out of one parish into another, and there leaving it to be maintained.

County of } The jurors, &c. that A. B., late of the
(to wit.) } parish of G., in the county of M., yeo-
 man, C. D., late of the same place, widow, and E. F., late of the same place, spinster, being persons of evil name and fame, and wickedly devising and intending unjustly to aggrrieve the inhabitants of the parish of H., in the said county, and also to subject the said inhabitants of the said parish of H. to the burthen and maintenance of a certain female bastard child, born of the body of one J. K., spinster, the said female bastard child then being in the said parish of G., and then having no legal place of settlement in the said parish of H., on the day of in the year of the reign of our Sovereign Lord George the now King of Great Britain, &c., with force, &c., the said female child so as aforesaid not having any legal settlement in the said parish of H., did unlawfully, without any legal warrant or authority for that purpose, remove and carry from and out of the said parish of G., in the said county of M., into the said parish of H., in the same county, there to be kept and maintained at the charge and expence of the inhabitants of the said parish of H., by reason whereof the inhabitants of the said parish of H. were put, and still are put, to great charge and expence, to the great damage of the said inhabitants, in contempt of our said Lord the King

and his laws, to the evil and pernicious example of all others in the like case offending, and against the peace of our said Lord the King, his crown and dignity. And the jurors, &c. *Second count.* that the said A. B. being a person of evil name and fame, and wickedly devising and intending unjustly to aggrieve the inhabitants of the parish of H., in the said county of M., and also to subject the said inhabitants of the said parish of H. to the burthen and maintenance of a certain female bastard child, the said female bastard child then being in the parish of G., in the said county of M., and then having no legal place of settlement in the said parish of H., on the day of in the said year of the reign of our said Lord the King, with force, &c. the said female bastard child so as aforesaid not having any legal settlement within the said parish of H., did unlawfully without any legal warrant or authority for that purpose, remove and carry, and cause and procure to be removed and carried from and out of the said parish of G. into the parish of H., and the said female bastard child did leave, and cause and procure to be left in the said parish of H., there to be kept and maintained at the expence and charge of the inhabitants of the said parish of H., by reason whereof the inhabitants of the said parish of H. were, and still are, put to great charge and expence, to the great damage of the said inhabitants, in contempt of our said Lord the King and his laws, to the evil and pernicious example of all others in the like case offending, and against the peace of our said Lord the King, his crown and dignity.

County of } That on, &c., at, &c. there happened *For a conspi-*
(to wit.) } a dreadful and terrible fire, which in a *racy by the*
short space of time burned down and consumed a very *curate and*
great number of dwelling houses, together with several out- *officers of a*
houses, barns, stables, goods, wares, merchandizes, stock *parish to de-*
in trade, and husbandry of great value, to the great distress *fraud sufferers*
and impoverishment of the poor owners thereof and their *by fire of mo-*
families; and that in tender consideration thereof, and on *ney collected*
the humble petition of A. B., C. D., E. F. and one hun- *by a brief for*
dred other distressed persons, on behalf of themselves and *their relief.*

a great many other sufferers by the said fire, our said Lord the King, deeply sensible of the unspeakable misery of the said poor sufferers, out of his special grace and princely compassion, was graciously pleased to condescend to grant his letters patent (commonly called a brief) sealed with his great seal, bearing date, &c. unto the said petitioners, thereby granting, &c. [*set out the letters patent.*] And the jurors, &c. do further present, that a copy of the said brief printed by R. S. being the printer of our said Lord the King, and indorsed and marked in a convenient part of the said printed copy, that is to say, on the back of the said printed copy, with the name of the said A. B. (the said A. B. being one of the trustees named in the said letters patent) written with his own hand, and at the time of the said A. B.'s signing the same, being also indorsed and marked on the said copy, and the printed copy being stamped according to the form of the statute in that case made and provided, was afterwards, to wit, on, &c. aforesaid, at, &c. aforesaid, duly sent and delivered to one D. D., late of the parish of Q. aforesaid, in the said county of N. husbandman, and one O. O., late of the same place, grocer (they the said D. D. and O. O. then and there being the churchwardens of the said parish of Q.) to be read and published, and the charity to be thereon collected, who afterwards, to wit, on, &c. at, &c. aforesaid received the same printed copy, and afterwards, to wit, on, &c., at, &c. aforesaid, delivered the same to T. B., late of the said parish of Q. clerk, being the then curate and officiating minister of the said parish, who then and there received the same, and that the said T. B. did openly before his delivery of a sermon, read such printed brief in the church of the said parish of Q. to the congregation there assembled on one of the Sundays which happened within two months next after the said T. B. had received the same, to wit, on, &c., to wit, at, &c. aforesaid. And the jurors, &c. do further present, that the said D. D. and O. O. afterwards, to wit, on, &c. last aforesaid, at, &c. aforesaid, did collect and receive in the said church, divers large sums of money freely therein given, that is to say, from C. D. the sum of, &c. and from E. F. the sum of, &c. amounting in the whole to a large sum of money; to wit, to the sum of, &c.

of lawful money, which said several sums of money were so given by the said C. D. and E. F. respectively to the said D. D. and O. O., to and for the use of the poor sufferers by the dreadful fire aforesaid: and the jurors, &c. do further present, that the said T. B., D. D., and O. O. afterward, to wit, on, &c. aforesaid, at, &c. aforesaid, did unlawfully and unjustly conspire, combine, confederate, and agree among themselves to cheat and defraud the said poor sufferers of a large sum of money, to wit, of the sum of, &c. part of the said sum of, &c. which had been so as aforesaid collected and received by the said D. D. and O. O. And the jurors, &c. do further present, that the said T. B., D. D., and O. O., in pursuance of the conspiracy and combination aforesaid, afterwards, to wit, on the same day and year last aforesaid, at, &c. aforesaid, delivered to one W. W. (the said W. W. then and there being a deputy and agent authorized by the said letters patent to receive such charitable money for the use of the said poor sufferers) a small sum of money, to wit, the sum of, &c. and no more, (being only part of the said sum of, &c. so charitably and benevolently contributed and collected as and for the purpose aforesaid,) as and for the whole of the said money, so collected and received from the inhabitants of the said parish of Q. and the said other well-disposed persons then being within the same parish, to be delivered to the deputies and agents authorized to receive the same for the use of the said poor sufferers as aforesaid, by reason whereof the said poor sufferers were greatly injured and aggrieved, to the great damage of the said poor sufferers, and against the peace, &c.

County of } That W. O., late of, &c. and W. B., For conspiring
 (to wit.) } late of, &c., being evil disposed persons, to charge a
 and wickedly devising and intending one A. E. not only of man with re-
 his credit and good reputation unjustly to deprive, but also ceiving stolen
 to obtain and acquire to themselves of and from the said A. E. goods, and
 divers large sums of money, on, &c. with force and arms, at thereby ob-
 &c. aforesaid, did amongst themselves conspire, combine, taining money
 confederate, and agree falsely to charge and accuse the said for compound-
 A. E. with having lately before knowingly received certain ing the same
 and causing
 him to lay out
 a sum of mo-
 ney for the en-

tertainment of
the conspira-
tors at one of
their houses.

stolen goods. And the jurors, &c. do further present, that the said W. O. and W. B. afterwards, to wit, on the said, &c. at, &c. aforesaid, according to the said conspiracy, combination, confederacy, and agreement between themselves, before had as aforesaid, falsely, wickedly, and for the sake of unjust lucre and gain, did, in the presence and hearing of divers persons, charge and accuse him the said A. E. that he the said A. E. had bought certain hats, that were stolen, knowing them to be stolen, and that they the said W. O. and W. B. did then and there falsely pretend and affirm to the said A. E. that a bill of indictment was then found at the general session of the peace, holden at the Sessions-house at, in and for said county of N. on, &c. then last past against him the said A. E. for receiving stolen goods, knowing the same to have been stolen, whereas in truth and in fact there was not at the time of such charge and accusation, nor at any time before or since, any bill or bills of indictment whatsoever in any manner found against the said A. E. for the said supposed offence so falsely charged on him, or for any such like crime, and whereas in truth and in fact the said A. E. was never guilty of the said supposed offence, or any other offence of that kind. And the jurors, &c. do further present, that by the said false accusations and by divers threats, menaces, and allegations of them the said W. O. and W. B. that he the said A. E. should be transported into parts beyond the seas for the said pretended offence, they the said W. O. and W. B. did afterwards, to wit, on the said, &c. at, &c. aforesaid, demand, receive, and take of the said A. E. five notes of the bank of England, each of the said notes purporting to be of the value of five pounds, for and as a composition of the said pretended offence, and to discharge the said A. E. from all further prosecution for the same, and they the said W. O. and W. B. did also then and there by the false and wicked pretences aforesaid, unlawfully cause and procure the said A. E. to expend and lay out, and the said A. E. did then and there expend and lay out, twenty-five shillings of lawful money of Great Britain, at a certain house of public entertainment by the name of the the Royal Hotel, in aforesaid, in wine and other liquors, in the company and for the entertainment of them

the said W. O. and W. B., to the great damage, infamy, and disgrace of the said A. E. to the evil and pernicious example, &c. and against the peace, &c.

County of } That T. V., A. M., and R. B., all of For conspi-
 (to wit.) } the parish of in the county of racy to induce
 did on the day of in the year other persons
 of the reign of, &c. unlawfully and wickedly combine, to commit a
 confederate, and agree together, to obtain and procure felony, for
 certain evil disposed persons, that is to say, W. S., W. W., which the con-
 M. H. (*and others by name,*) with force and arms felo- spirators might
 niously and burglariously to break and enter about the conviction and
 hour of eleven in the night of the day of obtain a re-
 in the year aforesaid, at, &c. the dwelling house of one A. M. ward for con-
 there situate, and the goods of the said A. M. then and victing them.

there being, then and there feloniously and burglariously to steal, take, and carry away, with intent that the said T. V., A. M., and R. B., should cause the said persons, to wit, the said, W. S., W. W., M. H. (*and the others*) to be apprehended, and by law convicted for the said felony and burglary, and thereby wickedly and unjustly to procure and obtain, to and for themselves the said T. V., A. M., and R. B., the rewards given by act of parliament * upon the conviction of persons for the crime of burglary, in contempt of our said Lord the King, &c. &c.

County of } That A. B., late of, &c., (*naming* For a conspi-
 (to wit.) } the other defendants) together with racy to make a
 divers other evil disposed persons, to the jurors aforesaid a great riot
 as yet unknown, heretofore, to wit, on, &c. with force and and to demo-
 arms, at, &c. aforesaid, did unlawfully conspire, combine, lish a person's
 confederate, and agree together, unlawfully, riotously, and premises.
 routously, to break down, pull down, prostrate, demolish, and destroy a certain wall, and certain other erections,

* The rewards for convicting felons by statute are now repealed by 58 Geo. 3. c. 52. but other rewards for conviction are not unfrequently offered by private individuals, to which cases this form of indictment may be rendered applicable.

buildings, posts, pales, rails, and fences of one C. D. there then erected, standing, and being near a certain dwelling house and premises of the said C. D. there situate. And the jurors, &c. do further present, that in pursuance of the said conspiracy, combination, confederacy, and agreement so as aforesaid had, they the said A. B., &c. afterwards, to wit, on, &c. aforesaid, at, &c. aforesaid, with force and arms, did unlawfully, riotously, and routously assemble and meet together, near to the said dwelling house and premises of the said C. D. and near to the dwelling houses and premises of divers other liege subjects of our said Lord the King, there, and, being so assembled and met together, then and there unlawfully, riotously, and routously did make a great noise, riot, disturbance, and affray, and staid and continued there making such noise, riot, disturbance and affray, for a long time, to wit, &c. for the space of five hours, and thereby for and during all that time, there greatly disturbed, disquieted, terrified, and alarmed the said C. D. and his wife and family in the peaceable possession and enjoyment of his said dwelling house and premises, and also greatly disturbed, disquieted, terrified, and alarmed the said other liege subjects of our said Lord the King, inhabiting and residing in the said dwelling house and premises, and then and there unlawfully, riotously, and routously, did break down, pull down, prostrate, demolish, and destroy great part of the said wall, &c. &c. to wit, twenty perches of the said wall, then and there standing and being, and the materials thereof, to wit, five hundred bricks, &c. &c. of a large value, to wit, &c. unlawfully, riotously, routously, and wantonly, did cast and scatter into and about the King's common and public highway there, to the great damage and terror of the said, &c. and of his Majesty's other liege subjects, in contempt, &c. to the evil example, &c. and against the peace, &c. And the jurors, &c. do further present, that the said A. B., &c., together with divers other evil disposed persons, to the jurors aforesaid as yet unknown, heretofore, to wit, on, &c. aforesaid, with force and arms, at, &c. aforesaid, did unlawfully conspire, combine, confederate and agree together, unlawfully to break down, demolish, prostrate, and destroy, certain

Second count.

other erections, buildings, posts, pales, rails, and fences, there then standing and being the property of and belonging to his said Majesty's subjects there then inhabiting and residing, in contempt, &c., to the evil, &c., and against the peace, &c. And the jurors, &c. do further present, that Third count.
the said A. B. &c. together with divers other evil disposed persons, to the jurors aforesaid as yet unknown, being respectively rioters, routers, and disturbers of the peace of our said Lord the King, heretofore, to wit, on, &c. aforesaid, with force and arms, at, &c. aforesaid, did unlawfully, riotously, and routously assemble and meet together, to disturb the peace of our said Lord the King, near to the dwelling houses of divers other liege subjects of our said Lord the King, and being so assembled and met together there, then and there, unlawfully, riotously, and routously did make a great noise, disturbance and affray, and staid and continued there making such riot, noise, disturbance, and affray for a long space of time, to wit, &c., and thereby for and during all that time, there greatly disturbed, disquieted, terrified, and alarmed the said last mentioned subjects, in the peaceable possession, use, occupation, and enjoyment of their said dwelling houses, and then and there unlawfully, riotously, and routously did break down, pull down, prostrate, demolish, and destroy great part, to wit, twenty perches, of a certain other wall, and certain other erections, buildings, posts, pales, rails, and fences, to wit, twenty other erections, &c. of the said C. D. there then standing and being, and the materials thereof, containing divers, to wit, five hundred other bricks, &c. of the said C. D. of a large value, to wit, &c. unlawfully, riotously, routously, and wantonly, did cast and scatter into and about the said common and public highway there, to the great damage and terror of the said C. D. and his Majesty's other liege subjects, in contempt, &c., to the evil, &c., and against the peace, &c. [*Fourth count for a riot, omitting the conspiring.*]

For a conspiracy to charge a person with being the father of a bastard child, in order to obtain money from him.

County of } That R. B., late of, &c., R. T., late of,
(to wit.) } &c., R. O., late of, &c., and A. B., late of,
&c. being persons of evil name, fame, and dishonest conversation, and not endeavouring to seek their living by honest labour, according to the laws of this kingdom of England, but compassing, devising, and conspiring amongst themselves, unlawfully and unjustly to obtain and acquire into their hands and possession, the goods, chattels, and money of one D. D. of gentleman, in order to maintain their dishonest and wicked course of living, on, &c., at, &c. falsely, unlawfully, wickedly, and craftily, contriving, intending, conspiring, and devising among themselves to deceive and defraud the said D. D. not only of his monies, but also to deprive him the said D. D. of his good name, fame, estate and credit, and to bring the said D. D. into the greatest hatred, scandal, contempt and infamy, on, &c. aforesaid, at, &c. aforesaid, falsely, unlawfully, deceitfully, maliciously, and for the cause of wicked gain, conspired, contrived, consulted, and agreed among themselves falsely, unjustly, and wickedly to charge and accuse the said D. D. to be the father of a child whereof the said A. B. was then pregnant, *as they then and there pretended*, and by the conspiracy among them so as aforesaid before had, then and there with force and arms, &c. they did falsely and maliciously affirm, and every one of them then and there did falsely and maliciously affirm, that he the said D. D. then lately before had carnal knowledge of the body of her the said A. B. and had carnally known the said A. B. and that he the said D. D. was the father of the pretended child whereof the said A. B. was then pregnant *as she asserted and pretended*, and that for the further execution of the premises they the said R. B., R. T., R. O., and A. B., then and there agreed and concluded among themselves that he the said R. B. should go to the said D. D. and should falsely, wickedly, maliciously, and for the sake of wicked gain, should charge and accuse him the said D. D. that he the said D. D. then lately before had had carnal knowledge of the body of the said A. B. and had carnally known her the said A. B. and that he the said D. D. was the father of the said pretended child whereof

they pretended that she the said A. B. was pregnant; whereas in truth and in fact the said D. D. had not had carnal knowledge of her the said A. B. and also whereas the said A. B. *was not then and there pregnant of any child*; * and the jurors, &c. do further say, that the said R. B., in execution of the premises, and according to the said conspiracy, consultation, and agreement among them the said R. B., R. T., R. O., and A. B. as aforesaid before had, afterwards, to wit, on the said, &c. at, &c. aforesaid, with force and arms, &c. falsely, unjustly, wickedly, and maliciously, and for the sake of wicked gain, in the hearing of divers persons, charged and accused the said D. D. that he the said D. D. then lately before had had carnal knowledge of the body of the said A. B. and had carnally known her the said A. B. and that he the said D. D. was the father of the said pretended child whereof they affirmed the said A. B. then was pregnant, to the great damage, scandal, and defamation of the said D. D. to the worst and most pernicious example, &c. and against the peace, &c.

County of..... } That H. R., late of, &c., D. W., late For a conspi-
 (to wit.) } of, &c., and S. D., late of, &c., being evil racy to charge
 disposed persons, and contriving and intending one G. O. a man with
 not only of his good name, fame, credit, and reputation, committing an
 wholly to deprive, but also to obtain and get for themselves unnatural
 of and from the said G. O. divers sums of money, on, &c. crime with one
 of the conspi-
 at the said, &c. among themselves did conspire, combine, rators, and
 confederate, and agree, falsely to charge and accuse the thereby ob-
 said G. O. that he the said G. O. then lately before had taining money
 committed the crime of sodomy, commonly called buggery, under pretence
 with him the said H. R. And the jurors, &c. do further of concealing
 present, that the said H. R., D. W., and S. D., afterwards, the same and
 to wit, on the said, &c. at, &c. aforesaid, according to the desisting from
 conspiracy, combination, confederacy, and agreement be- prosecution.

* The words in italics being omitted, the form of indictment may be easily adapted to the case of conspiring to charge a person unjustly with being the father of a bastard child of which a woman is really pregnant; for the mere naked fact of *conspiring* may apply to one case as well as to the other; and the injustice contemplated susceptible of proof in both.

tween them as aforesaid had, falsely, unlawfully, and wickedly did charge and accuse the said G. O. that he the said G. O. then lately before had committed the crime of sodomy, commonly called buggery, with him the said H. R., whereas in truth and in fact the said G. O. was never guilty of the said crime, or of any crime of the like nature. And that they the said H. R., D. W., and S. D., in pursuance of and according to the conspiracy, combination, confederacy, and agreement between them as aforesaid had, afterwards, to wit, on the said, &c., at, &c. aforesaid, unlawfully, wickedly, and unjustly did obtain, acquire, and get into their hands and possession, the sum of five pounds of lawful money of Great Britain, of the monies of the said G. O. of and from the said G. O. under the aforesaid false colour and pretence, and also under colour and pretence of concealing the said supposed crime, and for not prosecuting the said G. O. for the same, to the great damage of the said G. O. to the evil and pernicious example, &c. and against the peace, &c. [*To this may be added a count, omitting the conspiracy for obtaining money by threats.*]

Another for a
conspiracy for
charging a per-
son with sodo-
my, and de-
manding a
sum of money
to settle the
same.

County of } The jurors, &c. that A. B., late of, &c.,
(to wit.) } C. D., late of, &c., and E. F., late of,
&c., being persons of evil name and fame, and of dishonest conversation, and wickedly and maliciously devising, and intending to deprive one H. I. of his good name, credit, and reputation, and to bring him into great contempt and hatred among the liege subjects of our said Lord the King, and also to obtain, acquire, and get to themselves, of and from the said H. I. divers sums of money on the day of in the year of the reign, &c. at the parish aforesaid, in the county aforesaid, among themselves did conspire, combine, confederate, and agree together falsely to charge and accuse the said H. I. that he the said H. I. had then lately before assaulted and committed the crime of sodomy with and upon him the said A. B. And that the said A. B., C. D., and E. F., in pursuance of and according to the said conspiracy, combination, confederacy, and agreement between them so as aforesaid before had,

afterwards, to wit, on the same day and year aforesaid, at the parish aforesaid, in the county aforesaid, did unlawfully, wickedly, and maliciously, falsely charge and accuse the said H. I. that he the said H. I. had then lately before committed the detestable crime of sodomy with him the said A. B., whereas in truth and in fact the said H. I. was never guilty of the said crime of sodomy, or of any other crime or offence of the like nature, with the said A. B. or any other person whomsoever, and that the said A. B., C. D., and E. F., in pursuance of and according to the said conspiracy, combination, confederacy, and agreement between them so as aforesaid before had, afterwards, to wit, on the same day and year aforesaid, at the parish aforesaid, in the county aforesaid, unlawfully and unjustly did demand the sum of 100*l.* of and from the said H. I. to compound the said supposed crime, and not to prosecute the said H. I. for the same, with intention to obtain, acquire, and get into their hands and possession, of and from the said H. I. a large sum of money as a composition for the said supposed crime, and for not prosecuting him for the same, to the great damage, scandal, and disgrace of the said H. I., to the evil, &c., and against the peace, &c. And the jurors, &c. that the said A. B., C. D., and E. F., on the said day of in the year aforesaid, at the parish of K. aforesaid, in the said county of M. did wickedly, unlawfully, and for lucre and gain sake, falsely charge and accuse the said H. I. with having committed the crime of sodomy with the said A. B., and did then and there wickedly and unlawfully threaten the said H. I. that unless he the said H. I. would give them the said A. B., C. D., and E. F., the sum of 100*l.* they the said A. B., C. D., and E. F., would swear the same against him with intention to obtain, acquire, and get into their hands and possession, of and from the said H. I. a larger sum of money, whereas in truth and in fact the said H. I. was never guilty of the said crime, or of any other crime of the like nature, with him the said A. B., or any other person whomsoever, to the great damage, and scandal, and disgrace of the said H. I., to the evil, &c. and against the peace, &c.

For conspiring
to charge a man
and his wife
for keeping a
bawdy-house,
and endeavour-
ing to persuade
a girl to swear
false, and offer-
ing her a sum
of money for
that purpose,
and preferring
a bill of indict-
ment against
them, which
was returned
not found.

County of } The jurors, &c. that I. D., late of L.
(*to wit.*) } yeoman, and R. D., late of L. labourer,
being persons of evil minds and wicked dispositions, and
maliciously devising, and intending unlawfully and un-
justly to aggrieve one W. C. of L. grocer, and E. his wife,
and to deprive them of their good name, and credit, and
reputation, on the day of in the
year of the reign, &c., at L. aforesaid, to wit, at the parish
of B. in the ward of C. in L. aforesaid, between themselves
did conspire, combine, confederate, and agree to cause and
procure the said W. C. and E. his wife, falsely and without
any reasonable cause, to be indicted and prosecuted for
keeping a common ill-governed and disorderly house, and
that the said I. D. afterwards, to wit, on the same day and
year aforesaid, at L. aforesaid, to wit, at the parish of B.
aforesaid, in the said ward of C. in L. aforesaid, in pur-
suance of, and according to the said conspiracy, combina-
tion, confederacy, and agreement between him and the
said R. D. so as aforesaid had, unlawfully, and wickedly,
and maliciously did solicit and endeavour to persuade one
M. C. spinster, falsely to depose, swear, and give evidence
upon a bill to be exhibited by them the said I. D. and
R. D. at the then next general quarter sessions of the
peace, to be holden for the city of L. to the jurors then
to be sworn to inquire for our said Lord the King, for the
body of the same city, against the said W. C. and E. his
wife, for keeping a common ill-governed and disorderly
house; that the aforesaid E. C. was a bawd, and had put
and caused her the said M. C. to be put to a bed to a man
in the house of the said W. C. at several and sundry times,
and that they, the said W. C. and E. his wife, kept a com-
mon bawdy house, and the better to induce the said M. C. so
falsely to swear, depose, and give such evidence as afore-
said, he the said I. D. on the same day and year aforesaid,
at L. aforesaid, that is to say, at the said parish of B. in
the said ward of C. in L. aforesaid, in pursuance of and
according to the said conspiracy, combination, confede-
racy, and agreement, between him and the said R. C. so as
aforesaid before had, did promise the said M. C. to give

her the said M. C. five guineas, to wit, five pieces of gold coin of this realm called guineas of the value of 5*l.* 5*s.* if she the said M. C. would so falsely swear, depose, and give such evidence as aforesaid; whereas in truth and in fact at the said time when he the said I. D. did so solicit the said M. C. falsely to depose, swear, and give such evidence as aforesaid, they the said I. D. and R. D. well knew, and each of them well knew, that the said M. C. could not truly depose, swear, and give such evidence as aforesaid, or any other evidence whatsoever against the said W. C. and E. his wife, or either of them, touching the crime of keeping an ill-governed or disorderly house; and whereas in truth and in fact the said W. C. and E. his wife were not, nor was either of them, ever guilty of keeping an ill-governed or disorderly house, or of any other offence of the like nature, and that they the said I. D. and R. D. then and there well knew, and each of them well knew, the same; and the jurors aforesaid, now here sworn, and charged to inquire for our said Lord the King, for the body of the city of L. upon their oaths aforesaid, do further present, that the said R. D. in further prosecution of the said wicked and malicious devices and intentions of them the said I. D. and R. D. in pursuance of, and according to, the said conspiracy, combination, confederacy, and agreement between them, so as aforesaid before had, afterwards, to wit, on the day of in the year aforesaid, at L. aforesaid, to wit, at the parish of B. in the ward of C. in L. aforesaid; at the general quarter sessions of the peace of our said Lord the King, then and there holden for the said city of L. at the Guildhall of the said city there situate, before I. S. esquire, mayor of the said city of L., I. G. serjeant at law, recorder of the said city, B. K., N. S., aldermen of the said city, and others their fellow justices of our said Lord the King, assigned to keep the peace in the said ward aforesaid, and also to hear and determine divers felonies, trespasses, and other misdemeanours committed within the said city, did exhibit a certain bill of indictment against the said W. C. and E. his wife, to A. B. &c. (*here name the grand jury,*) good and lawful men of the said city

then and there being the jurors, then and there being sworn and charged to inquire for our Lord the King, for the body of the said city, which said bill of indictment is as follows, that is to say, (*here insert the indictment,*) and which said bill of indictment was, by the said jurors above named, at the said general quarter sessions of the peace, holden as aforesaid, before the justices of our said Lord the King, and others their fellows aforesaid, there returned thus indorsed "*not found,*" * by means of which said accusation and prosecution against them the said W. C. and E. his wife, in manner and form aforesaid, they the said W. C. and E. his wife were greatly defamed and disgraced, to the great damage of the said W. C. and E. his wife, in contempt of our said Lord the King and his laws, to the evil and pernicious example of all others in the like case offending, and against the peace of our said Lord the King, his crown, and dignity.

Conspiring and
procuring a
wife to leave
her husband
and carry
away his goods,
whereby they
defraud him of
the same.

County of } The jurors, &c. that A. B. late of the
(to wit.)! } city of L., labourer, C. D., late of the
same place, yeoman; and E. F., late of the same place, yeo-
man, being persons of evil name, fame, and dishonest con-
versation, and contriving, devising, and intending unjustly
to aggrieve one S. C. of, &c. and also to disturb and destroy
the quiet, peace, and tranquillity of the said S. C. and to
deprive him of the company, comfort, and consolation of
R. his wife, on the day of in the
year of the reign, &c. at L., to wit, at the parish of St. F. in
the city of L. aforesaid, unlawfully and wickedly did con-
spire, combine, confederate, and agree among themselves
falsely and fraudulently to obtain and get into their
hands and possession, of and from the said S. C. divers

* The bill being *found* will make no difference in the charge of conspiracy, except in the adaptation of the language of the indictment to the fact, for even though *conviction* should have ensued, proof that it was obtained through the medium of a wicked conspiracy would sustain this indictment. Such proof indeed may be difficult, but the law nevertheless uniform.

goods and chattels, and to deceive and defraud the said S. C. thereof, and that the said A. B., C. D., and E. F., in pursuance of the said conspiracy, combination, confederacy, and agreement between them so as aforesaid before had, afterwards, to wit, on the day of in the year aforesaid, at L. aforesaid, to wit, in the parish aforesaid, in L. aforesaid, unlawfully and wickedly did incite, solicit, and persuade one R. C. then and yet the wife of the said S. C. to desert and leave the said S. C. her husband, and to go into places secret and unknown to her said husband without his will and consent: and the jurors, &c. that the said R. C. afterwards, to wit, on the day and year aforesaid, at the parish aforesaid, in L. aforesaid, by the incitements, solicitations, and persuasions of the said A. B., C. D., and E. F., did depart, and absent herself from the said S. C. her husband as aforesaid, with divers goods and chattels of the said S. C. that is to say, with one, &c. of the value, &c.: and the jurors, &c. that the said A. B., C. D., and E. F., well knowing the premises aforesaid, afterwards, to wit, on the said day of in the year aforesaid, at the parish aforesaid, in L. aforesaid, according to the conspiracy, combination, confederacy, and agreement between them as aforesaid before had, unlawfully and injuriously did obtain, acquire, and get into their hands and possession the goods and chattels of him the said S. C. above specified, of and from the said R. C. his wife, and him the said S. C. of the said goods and chattels unlawfully, fraudulently, and deceitfully did deceive and defraud, to the great grief and damage of the said S. C. to the evil and pernicious example of all others in the like case offending, and against the peace of our said Lord the King, his crown and dignity: and the jurors, &c. that the said A. B., C. D., and E. F., being persons of evil name and fame, and dishonest conversation, and well knowing, and each of them well knowing, that the said S. C. had and was possessed of a great personal estate, and contriving, devising, and intending, and each of them contriving, devising, and intending to seduce and entice by divers

unlawful ways and means R. C. the true and lawful wife of him the said S. C. and to cause and procure her the said R. C. not only to desert and go away from him the said S. C. her said husband, but also to take and carry away from him the said S. C. divers goods, chattels, wares, and merchandizes of him the said S. C. on the day of in the year aforesaid, at L. to wit, at the parish aforesaid, in L. aforesaid, their said unlawful contrivances, devices, and intentions, did conspire, combine, confederate, and agree to do and perform, and in pursuance of, and according to the said last-mentioned conspiracy, combination, confederacy, and agreement they the said A. B., C. D., and E. F., did afterwards, to wit, on the same day and year aforesaid, at the parish aforesaid, in L. aforesaid, unlawfully incite, solicit, and persuade, and each of them did incite, solicit, and persuade the said R. C. to desert and go away from the said S. C. her husband into places secret and unknown to him the said S. C. and to embezzle and take away with her, the said R. C. divers goods and chattels, of and from him the said S. C. and that in pursuance of the last-mentioned conspiracy, combination, confederacy, and agreement aforesaid, and by means of the said incitements, solicitations, and persuasions of them the said A. B., C. D., and E. F., the said R. C. afterwards, to wit, on the same day and year aforesaid, at the parish aforesaid, in L. aforesaid, him the said S. C. her said husband, against the will of the said S. C. did then and there unlawfully and unjustly desert and leave, and into places secret and unknown to the said S. C. did withdraw herself, and then and there did embezzle and take away with her divers goods and chattels of the said S. C. that is to say, one, &c. of the value of, &c. and that they the said A. B., C. D., and E. F., in pursuance of the said last-mentioned conspiracy, combination, confederacy, and agreement between them so as aforesaid before had, afterwards, to wit, on the same day and year aforesaid, at the parish aforesaid, in L. aforesaid, unlawfully and unjustly did receive and have, of and from the said R. C. the said goods and chattels last-mentioned, so

embezzled and taken away from him the said S. C. by her the said R. C. as aforesaid; they the said A. B., C. D., and E. F., then and there well knowing, and each of them well knowing, the same goods last-mentioned to have been embezzled and taken away as aforesaid, to the great grief and damage of the said S. C. to the evil and pernicious example of all others in the like case offending, and against the peace of our said Lord the King, his crown and dignity.

EMBEZZLEMENT.*

County of } That A. B. late of, &c. on, &c. at, For a single
(to wit.) } &c. aforesaid, was clerk to O. D. and a clerk of
E. R. of the same parish and county, bankers, and em- country bank-
ployed and entrusted by the said O. D. and E. R. to receive ers for embez-
money for them, and being such clerk so employed and en- zlement, on
trusted as aforesaid, then and there, by virtue of such em- 39 Geo. 3.
ployment † and entrustment as aforesaid, he the said A. B. c. 85.

* This offence is generally treated in books on criminal law under the general title of LARCENY, as being one variety only of that head of crime. In conformity with this practice it has been so noticed here in an anterior page; but for the sake of perspicuity, as well as to promote facility of reference, it has been thought more convenient to insert the precedents of indictments for embezzlement under the particular title which designates the specific offence.

The first statute passed expressly for this particular offence was (as has been observed, *ante*, p. 148) is 21 Hen. 8., but its operation is so confined and so little adapted to meet the exigencies of the present state of society; beside, that so many particular circumstances are requisite to support an indictment upon it, (as the actual delivery of the article embezzled by the hand of the master, the offender being above certain age, and of a particular description, &c. &c.) that it is not frequently had recourse to. Such precedents are therefore here introduced only as apply to cases of more frequent and common occurrence. The statute 39 Geo. 3. has been recently decided, at the Old Bailey sessions, not to extend to females. This has been conjectured to have been so determined on two grounds. 1. Because the words of the statute are "take into his possession" only, not into "his or her" possession. 2. Because the *employments* referred to by it, are such as are usually only filled by men, not by women.

† All the words in Italicks are necessary to bring the offence within the description of the statute. *R. v. Mac Gregor*, 3 B. & P. 106: Also, it is not sufficient to describe notes as "*pounds merely*," but if the embezzlement be of *notes*, they must be mentioned *eo nomine*. *Russel. C. & M.* 1237,

did receive * and take into his possession a certain sum of money, to wit, the sum of ten pounds, of the said O. D. and E. R. for and on the account of the said O. D. and E. R. his said masters and employers, and having so received and taken into his possession the said sum of money, for and on the account of his said masters and employers, he the said A. B. then and there, with force and arms, fraudulently and feloniously did embezzle and secrete part of the said sum of money, to wit, the sum of 6*l.* 18*s.* And so the jurors aforesaid, upon their oath aforesaid, do say, that the said A. B. did then and there, in manner and form aforesaid, feloniously steal, take, and carry away from the said O. D. and E. R. his said masters and employers, the said sum of 6*l.* 18*s.* of the monies of the said O. D. and E. R. for whose use, and on whose account the same was delivered to, and taken into, the possession of him the said A. B. being such clerk so employed and entrusted as aforesaid, against the form of the statute, &c. and against the peace, &c.

Another against
a servant for
embezzling
money and
notes on same
statute.

County of } That H. R. late of, &c. on, &c. was
(to wit.) } servant to D. I. W. and was employed
and entrusted by him the said D. I. W. to receive money for
him, and being such servant so employed, and so entrusted
by him the said D. I. W. to receive money for him, then
and there by virtue of such employment and entrustment as
aforesaid, did receive and take into his possession † ten
shillings in monies numbered, and one promissory note for
the payment of the sum of five pounds, and of the value of
five pounds, and two bank notes for the payment of the
sum of one pound each, of the value of one pound each,
of the said D. I. W. for and on account of the said
D. I. W. his said master and employer, and afterwards,
to wit, on, &c. aforesaid, with force and arms, at,

* If a servant receive money for his master in the county of A., and being called upon to account for it in the county of B., *there deny* the receipt of it, he *may* be indicted for the embezzlement in the latter county. *R. v. Taylor*, 3 B. & P. 596.

† i. e. "Take into his possession," *by the delivery of any other person, for and on account of his master*, for if it were by the delivery of the master himself, it is not an offence within *this* statute. *Russell: C. & M.* 1233.

&c. aforesaid, fraudulently and feloniously did embezzle and secrete the said ten shillings in monies numbered, and the said promissory note and bank notes. And so the jurors, &c. do say that the said H. R. did then and there, in manner and form aforesaid, feloniously steal, take, and carry away from the said D. I. W. the said ten shillings in monies numbered; and the said promissory note and bank notes, the said ten shillings in monies numbered being the monies, and the said promissory note and bank notes being the property of the said D. I. W. the master and employer of the said H. R. for whose use and on whose account the said monies, promissory notes, and bank notes, were delivered to and taken into the possession of him the said H. R. so entrusted and so employed as aforesaid, and the said sums of money payable and secured by and upon the said promissory notes being then, to wit, at the time of committing the said felony, due and unsatisfied to the said D. I. W. the proprietor thereof, against the form of the statute, &c. and against the peace, &c.*

County of } That A. B. late of, &c. on, &c. with force and arms, at, &c. aforesaid, feloniously did steal, take and carry away, one promissory note, for the payment of the sum of pounds, and of the value of pounds, the said note, at the time committing the felony aforesaid, being the property of one C. D. and the said sum of pounds, payable and secured by the same promissory note being then due and unsatisfied to the said C. D. the proprietor thereof, against the form, &c. and against the peace, &c.

For felony in stealing a promissory note, on 2 Geo. 2. c. 25. § 3.

* To any of these indictments under the statute for embezzlement, may be, and ought to be, added a count for larceny at common law. It was once objected, that different judgments being the consequence of convictions on one and the other, counts for them would not be joined; but it was said by Lord Ellenborough, "the act does not alter the quality of the offence," it is felony by both, and both clergyable felonies, only for the offence under the statute their transportation is for an extended term of fourteen, instead of seven, years. *R. v. Johnson*, 3 M. & S. 549. Still however it does not preclude a less term; it only confines it to a maximum. 2 E. P. C. c. 16.

For felony in stealing a bill of exchange, on 2 Geo. 2. c. 25. § 3.

County of } That A. B. late of, &c. on, &c. with
(to wit.) } force and arms, at, &c. aforesaid, feloniously did steal, take and carry away, one bill of exchange for the payment of ten pounds, and of the value of ten pounds, the said bill of exchange, at the time of committing the felony aforesaid, being the property of C. D. and the said sum of ten pounds payable and secured by and upon the same bill of exchange, then, to wit, at the time of committing the felony aforesaid, being due and unsatisfied to the said C. D. the proprietor thereof, against the form, &c. and against the peace, &c. *

For a misdemeanor, on 52 Geo. 3. c. 63. against a broker for embezzling a bill delivered to be discounted.

County of } That on, &c. at, &c. aforesaid, one
(to wit.) } O. B. did deposit a certain bill of exchange for the payment of money, to wit, the sum of three hundred and fifty pounds, the same being a security for monies and the property of him the said O. B. and of

* These may be added by way of separate counts to either of the preceding forms, if requisite; as also may a count for stealing *stamps and paper, if they can be used again*, though the bill be not valid. 2 Leach, 1036. The statute of 2 Geo. 2. c. 25. was a temporary one, but made perpetual by 9 Geo. 2. c. 18. It enacts, "that if any person or persons, shall steal or take by robbery any exchequer orders or tallies, or other orders, entitling any other person or persons to any annuity or share in any parliamentary fund, or any exchequer bills, *bank notes*, South Sea bonds, East India bonds, dividend warrants of the bank, South Sea company, East India company, or any other company, society, or corporation, bills of exchange, navy bills, or debentures, Goldsmith's notes for the payment of money, or other bonds or warrants, bills or promissory notes for the payment of any money, being the property of any other person or persons, or of any corporation, notwithstanding any of the said particulars are termed in law *a chose in action*, it shall be deemed and constructed to be felony of the same nature and in the same degree, and with, or without, the benefit of clergy, in the same manner as it would have been, if the offender had stolen or taken by robbery any other goods of like value with the money due on such orders, tallies, bills, bonds, warrants, debentures, or notes respectively, or secured thereby and remaining unsatisfied, any law to the contrary thereof in any wise used notwithstanding;" and it has been decided, that though "*bank notes*," in the plural, are the words of the act, to steal a single bank note is within the meaning. Leach, 1.

the value of three hundred and fifty pounds, with one W. R. as agent for him the said O. B. upon and for a certain special purpose,* without any authority either general, special, conditional, or discretionary, to sell or pledge such bill of exchange, that is to say, upon and for the special purpose that he the said W. R. should cause and procure the said bill of exchange to be discounted for and pay the proceeds thereof to him the said O. B.; and that the said W. R. late of, &c. not regarding his duty in that behalf, afterwards, to wit, on, &c. aforesaid, with force and arms, at, &c. aforesaid, did unlawfully negotiate and apply to his own use and benefit the said bill of exchange, in violation of good faith, and contrary to the said special purpose for which the said bill of exchange had been deposited with him as aforesaid, with intent to defraud the said O. B., the owner of the said bill of exchange, and the person who deposited the same as aforesaid, to the great damage of the said O. B. against the form of the statute, &c. and against the peace, &c. And the jurors, &c. do Second count. further present, that the said W. R. with whom on the said, &c. at, &c. aforesaid, as agent for the said O. B. a certain bill of exchange for the payment of money, to wit, the sum of three hundred and fifty pounds, the same being a security for money, and the property of the said O. B., and of the value of three hundred and fifty pounds, was upon and for a certain special purpose, to wit, for the special purpose of causing and procuring the said last-mentioned bill of exchange to be discounted for and to pay the proceeds thereof to him the said O. B., without any authority, either general, special, conditional, or discretionary, to sell or pledge such last-mentioned bill of exchange, did then and there, to wit, on the said, &c. with force and arms, at, &c. aforesaid, unlawfully negotiate and apply to his own use and benefit, such last-mentioned bill of exchange, in violation of good faith, and contrary to the special purpose last aforesaid, for which the said last-mentioned bill of exchange then was in the hands of the

* For observations on the different sections of this statute, see *ante*, p. 152, notes.

said W. R., with intent to defraud the said O. B. the owner of such last-mentioned bill of exchange, to the great damage of the said O. B., &c. against the form of the statute,* &c. and against the peace, &c.

Indictment
against survey-
or of highways
for embezzling
materials ob-
tained for re-
pairing them,
and employing
public labour-
ers, &c.†

County of } That W. R. late of, &c. at the seve-
(to wit.) } ral times of the committing of the se-
veral offences hereinafter-mentioned was one of the sur-
veyors of the highways of the parish of aforesaid,
in the county aforesaid, to wit, at, &c. aforesaid, and that
the said W. R., so being such surveyor of the highways as
aforesaid, not regarding his duty in that behalf, but
minding and intending to promote his own private gain
and emolument, at the expence of the inhabitants of the
said parish on, &c. and so forth, and on sixty other days
and times then next following, at, &c. aforesaid, unlaw-
fully, wilfully, and corruptly, by colour of his said office
of surveyor of the highways as aforesaid, did cause and
procure divers, to wit, fifty cartloads of gravel, and other
materials, which had been then and there dug and got at
the costs and charges of the inhabitants of the said parish,
for the purpose of repairing the public common highways
of the said parish, and which ought then and there to have
been laid upon and used in the repairs of such highways,
to be carried and conveyed to certain gardens, lands, and
grounds of the said W. R. within the said parish, and
there to be laid, spread, and used for his own private gain
and emolument, and did then and there unlawfully, wil-
fully, and corruptly, by colour of his said office, cause

* The statute declares this offence to be a misdemeanor, punishable by transportation *not exceeding* 14 years, or by *such other punishment* as the court in misdemeanors in general have discretion to inflict.

† This indictment (from 3 Chit. C. L. 666.) is not on any statute, but for an embezzlement and misdemeanor at common law, by a person in office, committed *virtute officii*; and introduced here as particularly applicable to cases of embezzlement, of a kind frequently arising in *country practice*; to which, as has been more than once observed, this volume is peculiarly dedicated.

and procure divers labourers, to wit, &c. [*naming them,*] then and there hired and retained at the costs and charges of the said inhabitants of the said parish to get and carry gravel and materials for the purpose of repairing and to repair the highways of the said parish, under the direction of the surveyors of the highways of the said parish, to be employed in the carrying and conveying the said gravel and other materials to the said gardens, lands, and grounds of the said W. R. and in there laying, spreading, and using the same for the private gain and emolument of the said W. R. when such labourers ought to have been then and there employed, getting gravel and other materials for the purpose of repairing, and in the repairing such highways, and also did then and there unlawfully, wilfully, and corruptly, by colour of his said office, cause and procure divers teams furnished with horses and other cattle, and with men to attend the same, which had been then and there duly sent by divers inhabitants and occupiers of lands, tenements, and hereditaments within the said parish, to wit, by, &c. [*naming them*] to perform statute duty for and in the repair of the said highways under the direction of the surveyors of the highways of the said parish, to be employed in the carrying and conveying of the said gravel and other materials to the said lands, gardens, and ground of the said W. R. and in there laying, spreading, and using the same for the private gain and emolument of the said W. R. when such teams and men attending the same ought to have been then and there employed in getting, loading, and conveying gravel and other materials, for the purpose of repairing, and in the repairing such highways, contrary to the duty of the said W. R. as such surveyor of the highways as aforesaid, to the evil example, &c. and against the peace, &c.

[*Second count only for procuring gravel dug for the purposes of repairing to be taken to his own premises. Third count for procuring the public labourers to carry gravel for him. Fourth count employing the teams sent to perform statute duty to carry gravel for him. Fifth count for employing the public labourers to dig muck and dirt, and convey it for*

himself. Sixth count, for employing teams for the same purpose.]

Seventh count,
for embezzling
the gravel got
for the parish.

And the jurors, &c. do further present, that the said W. R. so being such surveyor of the highways as aforesaid, not regarding his duty in that behalf, but minding and intending as aforesaid, on the said, &c. and on sixty other days and times then next following at, &c. aforesaid, unlawfully, wilfully, and corruptly, by colour of his said office, did cause and procure divers other, to wit, one hundred other loads of gravel and other materials, which had been then and there dug and got at the costs and charges of the inhabitants of the said parish, for the purpose of repairing the public common highways of the said parish, and which then and there ought to have been laid upon and used in the repairs of such highways as aforesaid to be carried and conveyed to a certain place, called Queen Street, within the said parish, not being one of the public highways of the said parish, and there to be laid, spread, and used for his own private accommodation, gain, and emolument, contrary to the duty of the said W. R. as such surveyor of the highways as aforesaid, to the evil example, &c. and against the peace, &c.

ESCAPE AND RESCUE.*

Escape.

Against a constable for negligently permitting a person to escape, who was arrested for a misdemeanor in taking fish out of a pond.

County of } The jurors for our Lord the King
(to wit.) } upon their oath present, that on the
. day of in the year of the reign of our

* ESCAPE, in general, is understood where any person, who being under lawful arrest, and restrained of his liberty, either violently, or privately, evades such arrest and restraint, or is suffered to go at large before delivery by due course of law. 2 Bacon's Abr. 233.

And these escapes are of three kinds: 1st, by the person that hath the felon in his custody, which is properly *an escape*; 2dly, when the escape is caused by a stranger, which is ordinarily called a *rescue*; and 3dly, by the party himself, which is of two kinds, viz. 1st, without any

Sovereign Lord George the Third, King of the united kingdom of Great Britain, &c. at the parish of R., in the county of N., one S. O. came before A. B., Esq. then and yet one

act of force, which is a simple *escape*; and 2dly, with an act of force, viz. by *breach of prison*. 1 Hale, 590. 2 Hawk. c. 18.

RESCUE is where a stranger forcibly frees another from an arrest, or some illegal commitment. Co. Lit. 160. Fitz. Nat. Brev. 226. To which may be added, the offence of forcibly rescuing goods distrained for rent; and cattle impounded for damage. Russel, C. & M. 523.

And *the hindrance of a person to be arrested* that has committed felony, is a very high misdemeanor, and punishable by fine and imprisonment. 1 Hale, 606. 2 Hawk. c. 21.

But where the party is arrested and in actual custody *for felony*, or suspicion of felony, the rescuing of him is also felony by the common law. 1 Hale, 606.

To constitute an escape, there must be an actual arrest; and therefore if an officer, having a warrant to arrest a man, see him shut up in a house, and challenge him as his prisoner, but never actually have him in custody, and the party gets free, the officer cannot be charged with an escape. 2 Hawk. c. 19. § 1.

And, as there must be an actual arrest, such arrest must also be justifiable; for it be either for a supposed crime, where no such crime was committed, and the party never indicted nor appealed, or for such a slight suspicion of an actual crime, and by such an irregular mittimus, as will neither justify the arrest nor imprisonment, the officer is not guilty of an escape by suffering the prisoner to go at large.

And wherever an officer who hath the custody of a prisoner, charged with, and guilty of a capital offence, doth knowingly give him his liberty, with an intent to save him either from his trial or execution, he is guilty of a *voluntary escape*, and thereby involved in the guilt of the same crime of which the prisoner was guilty. 2 Hawk. c. 19. § 10.

But a *negligent escape* is where the party arrested or imprisoned doth escape against the will of him that arrested or imprisoned him, and is not freshly pursued and taken again before he hath lost the sight of him. Dalr. 510.

And it is enacted, by 1 Ric. 3. c. 3. That *justices of peace shall have authority to inquire in sessions of all manner of escapes, of every person arrested and imprisoned for felony.*

And it is enacted by 19 Geo. 3. c. 74. § 66. and 31 Geo. 3. c. 46. § 3. That if any person having the custody of *any offender ordered to hard labour* (instead of being capitally punished or transported, 19 Geo. 3. c. 74. § 65), in any place of confinement, or being employed by the person having such custody, as a keeper, under keeper, turnkey, assistant,

of the justices of our said Lord the King, assigned to keep the peace of our said Lord the King in and for the county of N., and also to hear and determine divers felonies, trespasses, and other misdeeds, committed in the same county; and the said S. O. did then and there, on his oath, before the same justice, charge, accuse, and give information against one M. M., of the parish aforesaid, in the county aforesaid, yeoman, for a certain misdemeanor, in taking fish out of the pond of one P. Q., Esq., at D., in the said county of N.; whereupon he the said A. B., the justice aforesaid, did then and there, to wit, at the parish of R. aforesaid, in the county aforesaid, make a certain warrant, under his hand and seal, in due form of law, directed to the constable of the parish of R., aforesaid, in the county aforesaid, thereby requiring them to take the body of the said M. M., and bring him before the said A. B., the justice aforesaid, to answer to such matters and things as should be alledged against him, touching the said offence; which said warrant afterwards, to wit, on the same day and year aforesaid, at D. aforesaid, in the county aforesaid, was delivered to one H. W., then being one of the constables of the said parish of R., in due form of law to be executed; by virtue of which said warrant, the said H. W. afterwards, to wit, on the said day of in the year aforesaid,

or guard, shall *voluntarily* permit such offender to escape, such person shall be guilty of felony; and if any person having such custody, or being so employed by the person having such custody, shall *negligently* permit such offender to escape, such person shall be guilty of a misdemeanor, and, being so convicted, shall be liable to fine or imprisonment, or to both, at the discretion of the court. And if any person shall *rescue any offender ordered to hard labour* (instead of being capitally punished, or transported, 19 Geo. 3. c. 74. § 66), in any place of confinement, either during his conveyance to the place appointed for such hard labour, or whilst such offender shall be in the custody of the person under whose care he shall be confined; or if any person shall be aiding in such rescue, such person so rescuing, or assisting, shall be guilty of felony, and may be ordered to hard labour, for not less than one, nor exceeding five years: or if any person shall attempt to rescue any such offender, or be aiding and assisting in any such attempt, though no rescue be actually made, such person so convicted shall be guilty of felony.

at the parish of R. aforesaid, in the said county, did take and arrest the body of the said M. M., and him the said M. M. in his custody, for the cause aforesaid, had; nevertheless, the said H. W., of the said parish of R., in the county aforesaid, yeoman, afterwards, to wit, on the said day of in the year aforesaid, the duty of his office in that respect not regarding, at the parish of R., in the county aforesaid, unlawfully and *negligently* (if violently, say, *violently and contemptuously*) did permit and suffer the said M. M. to escape and go at large whithersoever he would, out of the custody of him the said H. W., to the great hindrance of justice, in contempt of our said Lord the King and his laws, and against the peace, &c.

County of } That on, &c. at, &c. one T. B. I. was
(to wit.) } brought by one H. P., then being one of
the constables of the same parish, before W. D., Esq. then
and yet being one of the justices, &c. and the said T. B. I.
then and there was charged by one A. B., spinster, upon
the oath of the said A. B., with having feloniously ravished
the said A. B., and had carnal knowledge of her body,
against her will, and that the said T. B. I. then and there
was examined before the said W. D. the justice aforesaid,
touching the aforesaid offence to him as above charged,
upon which the said W. D. so being such justice of the peace
as aforesaid, did then and there make a certain warrant,
under his hand and seal, in due form of law, bearing date,
&c. directed to the keeper of the gaol at in the said
county of or his deputy, commanding him the said
keeper, or his deputy, that he should receive into his cus-
tody the said T. B. I., brought before him and charged,
upon the oath of the said A. B., with the premises above
specified, and the said justice, by the aforesaid warrant, did
command the keeper of the said gaol, or his deputy, to
safely keep him there, until he by due course of law should
be discharged; which said warrant afterwards, to wit, on
the said, &c. aforesaid, was delivered to the said H. P., then
and there being one of the constables of the same parish as

Against a con-
stable for neg-
ligently per-
mitting a man
to escape that
was committed
for a rape.

aforesaid, and then and there having the said T. B. I. in his custody for the cause aforesaid, and the said H. P. was then and there required and commanded by the said W. D. the aforesaid justice, immediately to convey the said T. B. I. to the said gaol at and to deliver him the said T. B. I. to the keeper of the said gaol, or his deputy, together with the warrant aforesaid. And the jurors aforesaid, upon their oath aforesaid, do further present, that the said H. P., late of, &c. aforesaid, cordwainer, afterwards, to wit, on the said, &c. aforesaid, then as aforesaid being one of the constables of the said parish, and then having the said T. B. I. in his custody for the cause aforesaid, at, &c. aforesaid, the said T. B. I. out of the custody of him the said H. P. unlawfully and negligently did permit to escape and go at large whithersoever he would, whereby the said T. B. I. did then and there escape and go at large whithersoever he would, to wit, at, &c. to the great hindrance of justice, to the evil example, &c. and against the peace, &c.

Against a
gaoler for ne-
gligently per-
mitting to
escape a pri-
soner com-
mitted to his
custody by vir-
tue of a justice's
warrant for
robbery.

County of } That on, &c. W. D., Esq. then being
(to wit.) } one of the justices of our said Lord the
King, assigned to keep the peace of our said Lord the King,
in and for the said county of N., and also to hear and de-
termine divers felonies, trespasses, and other misdemeanors
committed in the same county, in due form of law, did make
his warrant of commitment, under his hand and seal, to wit,
at, &c. bearing date the same day and year aforesaid, directed
to the keeper of the common gaol at N. in and for the said
county of N., by which said warrant, &c. [*here recite the war-
rant,*] as by the same warrant more fully appears, by virtue
of which said warrant of commitment afterwards, to wit, on
the said, &c. at, &c. A. B. then being the keeper of the said
common gaol of the said county of N., at N. aforesaid, did re-
ceive the said W. M. into his custody, in the said common
gaol there situate. And the jurors, &c. that the said A. B.,
late of, &c. yeoman, so being keeper of the said common
gaol, and having the said W. M. in his custody in the said
common gaol, on that occasion, afterwards, to wit, on, &c.

at, &c. unlawfully and negligently did permit and suffer the said W. M. (so being a prisoner, committed to the said gaol as aforesaid) to escape and go at large from and out of the custody of him the said A. B., out of the said prison, where-soever he would, whereby the said W. M. did then and there escape out of the said prison, and go at large whithersoever he would, to the great hindrance and obstruction of justice, in contempt, &c. to the evil example, &c. and against the peace, &c.

County of } The jurors, &c. that one W. D., Esq. } Against the
 (to wit.) } then being one of the justices, &c. in due } turnkey of a
 form of law did make his warrant of commitment, under his } common gaol
 hand and seal, to wit, at, &c. bearing date the same day and } for a misde-
 year aforesaid, directed to the keeper of the common gaol } meanor, in
 at N. in and for the said county of N., by which said warrant } aiding a pri-
 of commitment the said keeper was required to receive, &c. } soner, commit-
 [here set forth the mittimus,] as by the same warrant more } ted by virtue of
 fully appears, by virtue of which said warrant of commit- } a justice's war-
 ment afterwards, to wit, on the said, &c. at, &c. G. H. then } rant for petit
 being keeper of the said common gaol of the said county of N., } larceny, to
 at N. aforesaid, did receive the said O. O. into his custody in } make his es-
 the said common gaol there situate. And the jurors, &c. that } cape,
 D. M., late of, &c. labourer, well knowing the premises, after- }
 wards, and whilst the said O. O. was a prisoner as aforesaid, }
 for the cause aforesaid, to wit, on, &c. with force and arms, at, }
 &c. unlawfully, voluntarily, and unjustly did take, and cause }
 to be taken, certain irons, chains, and fetters, then affixed }
 and fastened upon the legs of the said O. O., from and off }
 the same, he the said O. O. then being such prisoner as }
 aforesaid, and also did permit him the said O. O. to go out }
 at a certain back door of and belonging to the said gaol, }
 and over a certain wall surrounding and inclosing the same, }
 and to go at large out of the said prison where-soever he }
 would, he the said D. M. then and there having the custody }
 and keeping of the keys of and belonging to the said prison, }
 whereby the said O. O. did then and there escape out of the }
 said prison, and go at large whithersoever he would. And }

Second count.

so the jurors aforesaid, upon their oath aforesaid, do say, that the said D. M., then and there, in manner and form aforesaid, was aiding and assisting the said O. O. to make his escape from and out of the said prison, to the great hindrance and obstruction of justice, in contempt, &c. to the evil example, &c. and against the peace, &c. And the jurors, &c. that the said O. O., on the said, &c. was lawfully committed to the custody of the said G. H., then being keeper of his said Majesty's gaol of and for the said county of N., to wit, at, &c. aforesaid, by virtue of a certain warrant of commitment, duly made, under the hand and seal of the said W. D., then being such justice as aforesaid, bearing date the same day and year last aforesaid, upon and in pursuance of a certain charge, upon oath, made by the said R. R. against the said O. O., to and before him the said W. D., being such justice as aforesaid, alledging that the said O. O. had feloniously stolen and carried away one leather halter of him the said R. R., of the value of tenpence, from and out of a certain stable of him the said R. R., situate, at, &c. and by which said last mentioned warrant the said G. H. was required safely to keep the said O. O. until the then next general quarter session of the peace, to be holden in and for the said county of N., or until he should be thence delivered by due course of law, as by the said last mentioned warrant more fully appears. And the jurors aforesaid, on their oath aforesaid, do further present, that the said D. M., so having the custody and keeping of the said keys as aforesaid, and well knowing the said last mentioned premises, afterwards, to wit, on, &c. aforesaid, with force and arms, at, &c. unlawfully, voluntarily, and contemptuously did permit and suffer the said O. O., then being a prisoner in the said gaol, under the custody of the said G. H., by virtue of the said last mentioned warrant, for the cause last aforesaid, to escape and go at large out of the said gaol wheresoever he would, without the knowledge, privity, or consent of the said G. H., being such keeper as aforesaid, and without any lawful authority whatsoever; whereby the said O. O. did then and there escape out of the said prison and go at

large whithersoever he would, to the great hindrance and obstruction of justice, in contempt of our said Lord the King and his laws, to the evil example of all others in the like case offending, and against the peace, &c.

County of } That B. and R. being respectively
 (to wit.) } watchmen, lawfully appointed and employed in and for the parish of in the city of in the county of and in the execution of their office as such watchmen, on, &c. between the hours of two and three of the clock, in the morning of the same day, at, &c. aforesaid, and during the time of their watching there, did arrest and apprehend divers, to wit, two disorderly persons, whose names were to them the said B. and R. watchmen as aforesaid, and still are, unknown, being then and there respectively found within the said last mentioned parish, disturbing the public peace, and did then and there take and convey the said two persons, so arrested and apprehended, to a certain watchhouse in the said last mentioned parish, and did then and there deliver them, as soon as conveniently might be, into the custody of O. O., late of, &c. (the said O. O. then and there being one of the constables of and for the said parish, and in the execution of his office as constable of the night at and in the said watchhouse,) in order that the said two persons might be there, to wit, in the said watchhouse, or in some proper place of safety, secured and detained until they, the said two persons, could be conveniently conveyed before some or one of his Majesty's justices of the peace, in and for the said city of aforesaid, to be dealt with according to law for their said offence; and although the said O. O. then and there took charge of the said two persons so apprehended and delivered to him as aforesaid; yet the said O. O., so being such constable as aforesaid, not further regarding the duty of his office as such constable, but neglecting the same, did not, nor would, dispose of the said two persons according to law, but on the contrary thereof, he the said O. O. afterwards, to wit, on, &c. aforesaid, at, &c. aforesaid, unlawfully and

Against a constable of a parish for suffering persons, whom the watchmen had brought to him in the watchhouse, to go at large, and for compounding with them for money.

Third count,
for extorting
money from
one of them.

wilfully discharged the said two persons from and out of his custody, and suffered and permitted them to escape and go at large wheresoever they would, before they had been conveyed before one or more of his said Majesty's justices of the peace in and for the said city of to be dealt with according to law for their said offence, [and afterwards, and before the said two persons, or any of them, had been conveyed before one or more of his said Majesty's justices of the peace for the purpose aforesaid, to wit, on, &c. aforesaid, at, &c. aforesaid, he the said O. O. so being such constable as aforesaid, unlawfully and wickedly compounded the said offence; that is to say, by then and there receiving and taking the sum of ten shillings of lawful, &c. as and by way of composition for the same,] contrary to his duty in that behalf, to the great damage and hindrance of public justice, to the evil example, &c. and against the peace, &c. [Second count same as first, leaving out what is contained within the brackets.] And the jurors, &c. that afterwards and before the said last mentioned two persons, or either of them, had been conveyed before one or more of his Majesty's justices of the peace for the purposes aforesaid, to wit, on the same, &c. aforesaid, at, &c. aforesaid, the said O. O. unlawfully, corruptly, deceitfully, and extortiously, for wicked lucre and gain, and contrary to the duty of his office as such constable as last aforesaid, did extort, receive, and take of and from one of the said last mentioned persons whose name is to the jurors aforesaid unknown, the sum of shillings (or as the case may be,) of like lawful money, as and by way of gratuity and reward to him the said O. O. for not conveying the said last mentioned two persons, or either of them, before one or more of his said Majesty's justices of the peace in and for the said county of to be dealt with according to law for their said last mentioned offence; in contempt, &c. to the evil example, &c. and against the peace, &c.

Indictment
for felony, on

County of } That heretofore, to wit, on, &c. at,
(to wit). } &c. W. D. Esq. then being one of the

justices of the peace of our said Lord the King, assigned, &c. in due form of law, did make his warrant of commitment under his hand and seal bearing date the same day and year aforesaid directed (amongst other things) to the keeper of his Majesty's goal in the town of (the same being the common gaol of our said Lord the King, in and

16 Geo. 2. c. 31. § 2. for conveying files into a prison in order to facilitate the escape of a prisoner.*

* The offence of assisting a felon in making an actual escape is a felony at common law, but not if it be ineffectual, 2 Leach, 671. The 16 Geo. 2. c. 31. enacts that "if any person shall by any means whatsoever be aiding or assisting to any prisoner to attempt to make his or her escape, from any gaol, although no escape be actually made, in case such prisoner then was attainted or convicted of treason, or any felony except petty larceny, or lawfully committed to, or detained in, any gaol for treason or any felony, *except petty larceny*, expressed in the warrant of commitment or detainer, every person so offending, and being thereof lawfully convicted, shall be deemed and adjudged guilty of *felony*, and shall be transported for the term of seven years; and in case such prisoner then was convicted of, committed to, or detained in any gaol for *petty larceny*, or any other crime, not being treason or felony, expressed in the warrant of commitment or detainer as aforesaid, or then was in gaol upon any process whatsoever, for any debt, damages, costs, sum or sums of money, amounting in the whole to the sum of one hundred pounds, every person so offending as aforesaid, and being thereof lawfully convicted, shall be deemed and adjudged to be guilty of a *misdemeanor* for which he or she shall be liable to a fine and imprisonment." The *second section* further provides "that if any person shall after the same day convey or cause to be conveyed into any gaol or prison, any vizard or other disguise, or *any instrument or arms*, proper to facilitate the escape of prisoners; and the same shall deliver, or cause to be delivered, to any prisoner in any such gaol, or to any other person there, for the use of any such prisoner without the consent or privity of the keeper or underkeeper of any such gaol or prison; any such person, *although no escape or attempt to escape be actually made*, shall be deemed to have delivered such vizard or other disguise, instrument or arms, with an intent to aid and assist such prisoner to escape or attempt to escape, and in case such prisoner then was attainted or convicted of treason, or any felony, *except petty larceny*, or lawfully committed to or detained in any such gaol for treason, or any felony, *except petty larceny*, expressed in the warrant of commitment or detainer, every person so offending, and being thereof lawfully convicted, shall in like manner be deemed and adjudged guilty of *felony*, and shall be transported, &c. for the term of seven years; but in case the prisoner to whom, or for whose use, such vizard or disguise, instrument or arms,

for the county of aforesaid, situate in the parish of in the town aforesaid) by which said warrant of commitment the said justice of the peace did require the said keeper to receive into his custody the body of one H. E. who was therewith sent to him the said keeper (the said H. E. having been brought before him the said justice, and charged upon the oath of B.S., Esq. and T.B., labourer, with having feloniously stolen, taken and carried away from and out of a certain granary of him the said B. S. situate at D. in the said county of a certain quantity of wheat of the value of five pounds, the property of him the said B.S.) and him safely keep until he should be discharged from thence by due course of law, as by the said warrant more fully appears, by virtue of which said commitment he the said H. E. afterwards, to wit, on the same day and year aforesaid, was conveyed, committed, and delivered to his Majesty's said goal, at the parish aforesaid, in the town and county aforesaid, for the said cause in the said warrant of commitment mentioned and expressed, to wit, for grand larceny, and was kept and detained therein under the custody of one W. O. then being keeper of the said goal, for the cause aforesaid. And the jurors aforesaid, upon their

shall be so delivered, then was convicted, committed, or detained for petty larceny or any other crime not being treason or felony, expressed in the warrant of commitment or detainer, or upon any process whatsoever, for any debt, damages, costs, sum or sums of money amounting in the whole to the sum of 100*l.* every such person so offending and being thereof lawfully convicted, shall be deemed and adjudged to be guilty of a misdemeanour for which he or she shall be in like manner liable to a fine and imprisonment." The *third section* makes it transportable felony to aid or assist any prisoner to attempt to make his escape from any officer charged to convey him to goal, by a warrant for treason or felony, except petty larceny, or to aid or assist any felon in escaping from a vessel conveying him to be transported under a lawful order. This statute *does not extend to cases where the prisoner made an actual escape, but only to an unsuccessful attempt so to do*, *R. v. Tilley*, 2 Leach, 759. No indictment can be supported on this act where the original commitment was for suspicion only, 1 Leach, 114, 363, 401. The prosecution must be commenced within a year after the offence is committed, by § 4.

oath aforesaid, do further present, that C. G., late of, &c. aforesaid, blacksmith, well knowing the premises, and not regarding the laws and statutes of this realm, nor fearing the pains and penalties therein contained, afterwards, on, &c. with force and arms at, &c. aforesaid, feloniously did convey and cause to be conveyed into the said goal two steel files and one iron chisel, being instruments proper to facilitate the escape of prisoners, and the said files and chisel being such instruments as aforesaid, then and there feloniously did deliver and cause to be delivered to the said H. E. (he the said H. E. then and there being a prisoner in the said goal, and there lawfully detained for the felony and larceny aforesaid, in the said warrant of commitment above-mentioned and expressed) without the consent or privy of the said W. O. then being keeper of the said gaol (under M. M. Esq. then sheriff of the said county of. . . .) or of any under keeper of the same gaol, which said files and chisel being such instruments as aforesaid, were then and there so conveyed into the said gaol, and delivered to the said H. E. as aforesaid, with felonious intent to aid and assist the said H. E.* so being such prisoner, and in custody as aforesaid, to escape and attempt to escape from out of the said gaol, against the form, &c. and against the, &c.

County of. } The jurors for our Lord the King, Against two
 (to wit.) } upon their oath present, that on the persons for
 day of. in the. year of the reign of rescuing from
 our Sovereign Lord George the Third, King of the united a constable a
 kingdom of Great Britain, &c. T. R. Esq. one of the just- person in his
 ices of our said Lord the King assigned to keep the peace custody for an
 in and for the said county of. and also to hear and de- assault.
 termine divers felonies, trespasses, and other misdemeanors,
 in the said county committed, did issue, make, direct, and
 deliver, a warrant or precept in writing to W. C. of.

* The indictment must state, that the instruments were conveyed with a design to effectuate the escape, 2 Hawk. c. 21. *note*.

in the county aforesaid, yeoman, one of the constables of in the county aforesaid, by which said warrant he the said W. C. the constable aforesaid, was commanded to take the body of D. D., late of and bring him the said D. D. before the said T. R. to be examined by him the said T. R. concerning an assault said to have been committed by him the said D. D. upon B. G. J. of which said W. C. the constable aforesaid, afterwards, that is to say, on the day of in the year aforesaid, at aforesaid, in the county aforesaid, by virtue of the said warrant, did take and arrest him the said D. D. for the cause aforesaid, and him the said D. D. in his custody, by virtue of the said warrant, then and there had; and that R. R., late of aforesaid, in the county aforesaid, yeoman, and S. R., late of the same place, yeoman, well knowing the said D. D. so to be arrested as aforesaid, afterwards, to wit, on the said day of in the year aforesaid, at aforesaid, in the county aforesaid, with force and arms, in and upon the said W. C., the constable aforesaid, then and there being in the peace of God and of our said Lord the King, and in the execution of his said office, did make an assault, and him the said D. D. then and there did beat, wound, and ill-treat; and that the said R. R. and S. R. him the said D. D., out of the custody of him the said W. C., and against the will of the said W. C., then and there, with force and arms, unlawfully did rescue and put at large, to go wheresoever he would; and that the said D. D. himself, out of the custody of the said W. C., and against the will of the said W. C., then and there, with force and arms, unlawfully did rescue and escape at large, wheresoever he would go, in contempt of our said Lord the King, and his laws, to the great damage of the said W. C., to the evil example of all others in the like case offending, and against the peace of our said Lord the King, his crown and dignity.

For rescuing
goods dis-
trained for
rent of a house.

County of } That on, &c. one M. D., late of, &c.
(to wit.) } in due form of law, did take and dis-

train one oak table of the value of ten shillings, and one feather bed of the value of thirty shillings, and one clock of the value of two pounds, of the goods and chattels of one W. H., labourer, then being in a certain dwelling house of the said M. D. situate in, &c. aforesaid, which same distress was taken by him the said M. D. for the sum of five pounds, being then due for rent, for one whole year, in arrear from the said W. H. to him the said M. D. for the house aforesaid; and that the said M. D. the said goods and chattels then and there had, and lawfully detained in his custody for the cause aforesaid. And the jurors, &c. do further present, that N. W., late of, &c. afterwards, to wit, on the said, &c. with force and arms, at, &c. aforesaid, the said goods and chattels, so as aforesaid by the said M. D. taken and distrained, and in the custody of him the said M. D. then and there lawfully being, from and out of the custody, and against the will of him the said M. D. then and there unlawfully, and injuriously did rescue, take, and carry away, (the said sum of five pounds, for the rent in arrear, as aforesaid due, nor any part thereof being then paid) and other wrongs to the said M. D. then and there did, to the great damage of the said M. D. and against the peace, &c.*

County of } That on, &c. and continually, af- Another for
(to wit.) } terwards, until, &c. one J. D. did assaulting bai-
hold of one J. M. a certain lodging room, being part and liff, and res-
parcel of a certain messuage, situate, &c. by demise from the cuing goods
said J. M. at, and under the rent of, &c. by the year pay- distrained for
able quarterly; and that on the said, &c. the sum of, &c. rent of a
for one year's rent of the said room, ending on the said, &c. lodger.

* The civil remedy by 2 Wm. & Mary (whereby treble damages and costs are recoverable for rescue of goods distrained, and also impounded) is the usual remedy resorted to, but nevertheless these indictments will lie.

said J. M. in due form of law, did take, seize, and distrain, divers goods and chattels of the said J. D. hereinafter specified, and set forth, to the value of, &c. for the said sum of, &c. for rent as aforesaid, so as aforesaid due, and in arrear, and that one A. B. was by the said J. M. on the said, &c. at, &c. aforesaid, put in possession of the said goods and chattels, which said goods and chattels so as aforesaid taken, seized, and distrained, were as follows, to wit, [*here set out the goods.*] And the jurors, &c. do further present, that one J. C., late of, &c. aforesaid, together with divers other malefactors, to the jurors aforesaid as yet unknown, on, &c. with force and arms, &c. at, &c. aforesaid, in and upon the said A. B. in the peace of God and our said Lord the King, then and there being, did make an assault, and the said goods and chattels, so as aforesaid, for the cause aforesaid taken, seized, and distrained, and then and there being in the custody and possession of the said A. B. from and out of the custody and possession, and against the will of the said A. B. unlawfully and injuriously did rescue, and the said A. B. from and out of the custody and possession of the said goods and chattels, then and there with force and arms, at, &c. aforesaid, unlawfully, unjustly, and against the will of the said A. B. did force and drive away (the said sum of, &c. so due for rent as aforesaid, or any part thereof, not being then paid or satisfied to the said J. M.) and other wrongs, to the said J. M. and A. B. then and there did, to the great damage of

Second count.

the said J. M. and A. B. and against the peace, &c. That the said J. C., together with divers malefactors to the jurors aforesaid as yet unknown, on the said, &c. with force and arms, at, &c. aforesaid in and upon the said A. B. in the peace of God and our said Lord the King, then and there being, did make an assault, and of the goods and chattels of the said J. D. then lately before, to wit, on the same day and year above mentioned, duly and lawfully taken, seized, and distrained by the said J. M. for the sum of forty shillings, then due from the said J. D. to the said J. M. for rent in arrear (the same goods and chattels then being in the custody and possession of the said A. B.) from

and out of the possession, and against the will of the said A. B. then and there with force and arms unlawfully and injuriously did rescue, and the said A. B. from and out of the custody and possession of the said goods and chattels, then and there, with force and arms, at the parish aforesaid, in the county aforesaid, unlawfully, injuriously, and against the will of the said A. B., did force and drive away, the sum of forty shillings, so due for rent as aforesaid, or any part thereof, not being then paid and satisfied to the said J. M., to the great damage of the said J. M., and against the peace, &c.

County of } That on, &c. and continually after-
 (to wit.) } wards, until, &c. one M. E., did hold
 of one J. W., a certain room or apartment, with the appur-
 tenances, being part and parcel of a certain messuage or
 dwelling house of him the said J. W. situate, &c. by virtue
 of a certain demise thereof, made by and from the said
 J. W. to the said M. E., at, and under the rent of fifteen
 shillings, reserved and made payable by the said demise, to
 the said J. W. on the said, &c. and that on the said, &c.
 the said sum of fifteen shillings was due in arrear, and un-
 paid, for the rest aforesaid, by virtue of the said demise to
 him, the said J. W. And the jurors, &c. do further pre-
 sent, that the said M. E. on, &c. at, &c. aforesaid, did frau-
 dulently and clandestinely convey and carry off from the
 said demised premises, his goods and chattels, that is to say,
 one pewter dish; &c. [*here mention the goods*] of the value

For an assault
 and rescuing
 goods seized
 as a distress for
 rent after a
 fraudulent re-
 moval. *

* See Starkie, 389. By 8 Ann, c. 14. it is enacted that in case any lessee of any messuages, tenements, &c. on demise whereof any rents shall be reserved or made payable, shall fraudulently and clandestinely convey and carry off from such demised premises, his goods or chattels with intent to prevent the landlord or lessor from distraining the same for arrears of the rent, the lessor or landlord, or his agent, within five days, may take and seize such goods and chattels wherever they may be found as a distress, and sell them in the same way as if they had been regularly distrained on the premises; and by 11 Geo. 2. c. 19. st. 1. the time is enlarged to thirty days. So that rescuing goods seized thus after a fraudulent removal, is a similar offence to rescuing them after a regular distress.

of the said sum of fifteen shillings, with intent to prevent the said J. W. the lessor aforesaid, from distraining the same for the said rent so reserved in arrear, due and unpaid, as aforesaid; whereupon the said J. W. afterwards, and within the space of five days next ensuing the said conveying and carrying off the same goods, to wit, on, &c. at, &c. aforesaid, did find the said goods and chattels, and the same goods and chattels so found, did then and there in due form of law seize as a distress for the said rent so due, and in arrear as aforesaid, and being also then unpaid, and the said goods and chattels in his custody and possession, for the cause aforesaid, then and there had, and that the said M. E., late of, &c. aforesaid, and S. his wife, afterwards to wit, on, &c. last aforesaid, at, &c. aforesaid, in and upon the said J. W., in the peace of God, and our said Lord the King, then and there being, did make an assault, and the said goods and chattels (so as aforesaid, for the cause aforesaid taken and seized) out of the possession, and against the will of the said J. W., unlawfully and injuriously did take, rescue, and carry away (the said sum of fifteen shillings, so due for rent as aforesaid, or any part thereof, not being then paid or satisfied, to the said J. W.) and other wrongs, to the said J. W. then and there did, to the great damage of the said J. W., and against the peace of our said Lord the King, his crown and dignity. [*Here add a count for a common assault.*]

For a rescue
of cattle taken
damage fea-
sant, before
they were im-
pounded.

County of } That H. H. on, &c. at, &c. had taken
(to wit.) } and distrained a certain gelding, then
being in a certain close of the said H. H., called, &c.
situate, lying, and being in, &c. feeding, and depasturing
upon the grass there then growing, and doing damage there
to the said H. H., and was then and there about to im-
pound the said gelding, as for, and in the name of, a dis-
tress for the said damage, so there done and doing to him
the said H. H., according to the law and custom of this
realm. And the jurors, &c. do further present, that W. H.
late of, &c. inn-keeper, then and there, and whilst the said
H. H. was so about to impound the said gelding as afore-

said, to wit, on, &c. aforesaid, with force and arms, at, &c. aforesaid, did unlawfully rescue the said gelding from and out of the custody of the said H. H. and did then and there unlawfully take, lead, and drive away the same, to the great damage of the said H. H., in contempt, &c. to the evil and pernicious example, &c. and against the peace, &c.

County of } That, on, &c. at, &c. one T. O. took For rescuing cattle out of a pound, taken as a distress damage feasant.
(to wit.) } and distrained one mare, and two colts of the cattle of one J. B., late of the parish aforesaid, yeoman, of the price of twenty pounds, in and upon a certain close or parcel of land, of him the said T. O., called, &c. situate and being at, &c. aforesaid, wrongfully feeding and depasturing upon the grass, growing in and upon the said close and parcel of land, and doing damage to him the said T. O., there as a distress for the damage, then and there done and doing by the said cattle, and the said mare and colts so taken and distrained as aforesaid, he the said T. O. on the same day and year aforesaid, at, &c. aforesaid, in the common pound of the hundred of B., in the said parish called B. pound, impounded and kept, and detained the same in the said common pound there as a distress for the cause aforesaid. And the jurors, &c. do further present, that the said mare and colts being so impounded and remaining in the said common pound, there as a distress for the cause aforesaid, the said J. B., on, &c. aforesaid, with force and arms, at, &c. aforesaid, the said common pound broke and entered, and the said mare and colts from and out of the same, without the licence and against the will of the said T. O. and without any satisfaction having been made to the said T. O. for the said damage done by the said mare and colts as aforesaid, unlawfully did rescue,* take, lead, and drive away, in contempt, &c. to the evil example, &c. and against the peace, &c.

* Pound breach is an insult to public justice, and as such is indictable at common law. 2 Hawk. c. 21. Russel, C. & M. 523.

FORCIBLE ENTRY AND DETAINER.*

For a forcible entry and detainer at common law.

County of } That A. B. late of, &c. and C. D.
 (to wit.) } late of, &c. together with divers other
 evil disposed persons, and disturbers of the peace of our
 said Lord the King, to the number of six and more, whose
 names to the jurors aforesaid are as yet unknown, on, &c.
 with force and arms, *and with a strong hand*, † unlawfully,

* An entry may be said to be forcible, not only in respect of a violence actually done to the person of a man, as by beating him if he refuse to relinquish his possession, but also in respect of any other violence in the manner of the entry, as by breaking open the doors of a house whether any person be in at the same time, or not, especially if it be a dwelling house. 1 Hawk. c. 64.

And forcible entry and detainer are offences at the common law, and the prosecutor, if he please, may proceed in that way; but then the indictment ought to express such circumstances as that it may appear upon the face of it to be more than a common trespass; for a man cannot be indicted for a bare trespass. 3 Burr. 1698, 1731.

† “But I do not know,” said Lord Kenyon, C. J. “that it has ever been decided that it is necessary to alledge a greater degree of force in an indictment *at common law* for a forcible entry, than in an indictment on the statutes. Therefore an indictment at common law, charging the defendants with having unlawfully and *with a strong hand* entered, &c. is good; for the words “*with a strong hand*,” mean something more than a common trespass.” 8 T. R. 357.

By 5 Ric. 2. stat. 1, c. 8, “None shall make entry into lands (or benefices or offices of holy church, 15 Ric. 2, c. 2, or lands and tenements, or other possessions, 8 Hen. 6, c. 9, § 8,) but where entry is given by law, and in such case *not with strong hand*, nor with multitude of people, but only in lawful and easy manner.”

But by 8 Hen. 6. c. 9, “They which keep their possessions with force in lands or tenements, whereof they, or their ancestors, or they whose estate they have in such tenements, have continued their possessions three years, shall not be endamaged by force of any of the statutes concerning forcible entry.”

By 5 Ric. 2. c. 7, “If any man do to the contrary of that statute, and thereof be duly convicted (*that is, by the common course of proceeding by indictment or the like*), he shall be punished by imprisonment of his body, and therefore ransomed at the King’s will.”

And by 8 Hen. 6. c. 9, “The justices of counties, and the mayors or justices of peace, sheriffs and bailiffs of boroughs, shall have power to inquire by the people of the county, as well of them that make such

violently, forcibly, and injuriously did enter into, &c. [*state the premises according to the fact,*] then and there being in the peaceable possession of one of E. F.* and situate and being in the parish aforesaid, in the county aforesaid; and that the said A. B. and C. D. together with the said other evil disposed persons, then and there with force and arms, *and with a strong hand*, unlawfully, violently, forcibly, and injuriously did expel, amove, and put out the said E. F. from the possession of the said premises, with the appurtenances, and the said E. F. so as aforesaid expelled, amoved, and put out from the possession of the same with force and arms, *and with a strong hand*, unlawfully, violently, forcibly, and injuriously have kept out † from the day and year aforesaid, until the taking of this inquisition, and still do keep out, and other wrongs to the said E. F., then and there did, to the great damage of the said E. F. and against the peace, &c.

forcible entries into lands or tenements, as of them which the same hold with force." § 3, 6.

It is sufficient in the caption of such indictment, to say, *justices assigned to keep the peace of our Lord the King*, without showing that they have authority to hear and determine felonies and trespasses; for the statute enables all justices of the peace, as such, to take such indictments. Palmer, 277. Cro. Jac. 623.

And the tenement, in which the force was committed, must be described with convenient certainty, for otherwise the defendant will neither know the special charge, to which he is to make his defence, nor will the justices or sheriff know how to restore the injured party to his possession. 1 Hawk. c. 64.

The statutes also seem to require, that in the indictment, the entry must be laid *with strong hand (manu forti)*, or *multitude of people*; and that without these, they are not pursued; but some have held, that equivalent words will be sufficient, if the indictment conclude, *against the form of the statute*. 3 Burr. R. 1698.

* And no indictment can warrant an award of restitution, unless it find that the wrong doer both ousted the party grieved, and also continued his possession at the time of the finding the indictment: for it would be a repugnancy to award restitution to one who was never in possession; and vain to award it to one who doth not appear to have lost it. 1 Hawk. c. 64.

† And the same description and degree of force is necessary to constitute a forcible *detainer*, as a forcible *entry*. Dalt. 126. 1 Hawk. c. 64.

For a forcible entry into a freehold, on st. 5 and 13 R. 2. County of } That A. B. late of, &c. and C. D. (to wit.) } late of, &c. together with divers other evil disposed persons, and disturbers of the peace of our said Lord the King, whose names to the jurors aforesaid are as yet unknown, on, &c. with force and arms, and with a strong hand did enter into, &c. [*here state the premises according to the fact,*] then and there being the freehold of E. F., and then being in the tenure and occupation of one G. H., and did then and there with force and arms, unlawfully with a strong hand, and without judgment recovered, disseise the said E. F., and expel and eject the said G. H. from his possession of the same, and with force and arms unlawfully, and with a strong hand, from the day and year aforesaid, until the taking of the inquisition, have kept out and still do keep out the said E. F. so disseised as aforesaid, and the said G. H. so ejected and expelled as aforesaid from the said premises, with the appurtenances, against the form of the statute, &c. and against the peace, &c.

FORESTALLING, ENGROSSING, AND REGRATING.*

For forestalling a large drove of oxen on their way to public market. County of } The jurors for our Lord the King (to wit) } upon their oath present, that M. D. late

* FORESTALLING signifies marketing before the public in general, or preventing the sale of any thing in public market, by intercepting it. 5 & 6 Edw. 6. c. 14.

ENGROSSING means purchasing in the gross, or monopolizing any thing in order to enhance the price to the public. Id.

REGRATING is, when one gets into his possession in a fair or market, any dead victual, and shall sell the same again in the same place, or in any fair or market within four miles thereof. Id.

There have been several statutes made from time to time against these offences, which, from the 5 & 6 Edw. 6. c. 14. and others downward, made for enforcing the same, have been generally repealed by the 12 Geo. 3. c. 71. But these offences still continue punishable upon indictment at the common law by fine and imprisonment; by which all endeavours whatsoever to enhance the common price of any merchandize, and all kinds of practices which have an apparent tendency thereto,

of..... in the county aforesaid, yeoman, on the..... day of..... in the..... year of the reign of..... at..... aforesaid, in the county aforesaid, did buy and cause to be bought of and from one W. B. seventy oxen, for the sum of 3000*l.* of lawful money of Great Britain, as he the said W. B. then and there was driving the said seventy oxen towards the market, at..... in the said county of..... with the intent and for the purpose of exposing for sale and selling the said oxen in the said market there, and before the said seventy oxen were brought into the said market, where the same should be sold, well knowing that the said seventy oxen were then and there on the way to the said market so to be exposed for sale, and with an evil design to raise the price of oxen in the said market, at..... aforesaid, in contempt of our said Lord the King and his laws; to the evil example of all others in

are highly criminal, and punishable. 1 Hawk. c. 80. 4 Black. Com. 160.

The bare engrossing of a whole commodity, with *an intent to sell at an unreasonable price*, is an offence indictable at common law, whether any part thereof be actually sold by the engrosser, or not. Ibid.

And so jealous is the common law of all practices of this kind, that strictly, it is unlawful to sell corn in the sheaf; because by such means the market is in effect forestalled. Ibid.

In a modern case, *R. v. Waddington*, (1 E. R. 143.) it was decided that spreading rumours with intent to raise the price of a particular species of aliment, endeavouring to enhance its price by persuading others to abstain from bringing it to market, and engrossing large quantities in order to resell them at the exorbitant prices occasioned by his own artifices—are offences indictable at common law, and subject the party so acting, to fine and imprisonment at the discretion of the court in which he is convicted. It was also held that hops, though not used immediately for food, fall within this rule.

It is, in all these offences, right to charge in the indictment, that the acts complained of were done *with an evil design to raise the price of the article in question*, for whenever a bad intent is essential to the completion of an offence, it must be averred in the indictment and proved on the trial, 6 E. R. 473. 2 E. P. C. 1021.—The indictment must also state the quantity of goods alledged to be forestalled, or engrossed, and if it merely state “a great quantity” the proceedings will be bad on demurrer, 1 E. R. 583. 1 Ld. Raym. 475. 1 Hawk. c. 18.

the like case offending, and against the peace of our said Lord the King, his crown and dignity.

For engrossing 5000 quarters of wheat. *County of.....* } That M. D. late of in the
(to wit.) } county aforesaid, yeoman, on the
day of in the year of the reign of at
..... aforesaid, in the county aforesaid, did engross and
get into his hands, by buying of and from one W. B.,
5000 quarters of wheat, then in the sheaf, to the intent to
sell the same again at an unreasonable profit, to the evil
example of all others in the like case offending, and against
the peace of our said Lord the King, his crown and dignity.

For regrating. *County of.....* } That M. D. late of in the
(to wit.) } county aforesaid, yeoman, on the
day of in the year of the reign of at
..... aforesaid, in the county aforesaid, to wit, in a cer-
tain market then and there holden, did buy, obtain, and
get into his hands and possession forty geese and seventy
chickens of and from one W. B. for the sum of 20*l.* of
lawful money of Great Britain (the said geese and chickens
then being brought to the said market by the said W. B.
to be sold); and that afterwards, to wit, on the same
day of in the year aforesaid, he the said M. D. at
..... aforesaid, in the county aforesaid, in the said mar-
ket there, unlawfully did regrate * the said geese and

* This offence of regrating stands upon a somewhat different ground, both in point of argument and authority, from those of forestalling and engrossing. Some modern writers upon political economy seem to refine much too far, when they contend that forestalling and engrossing by individuals of large capitals, has not an injurious tendency, by imposing a fictitious value and forced price upon the articles they monopolize; but it may be a subject of reasonable controversy, whether there can, either in law, or sound discretion, be any offence (after an article has been fairly brought into the competition of a market and openly sold therein) in re-selling it though in the same market on the same day. It should seem, at least, now that it is no longer a statutable offence

chickens, and sell the same again to one A. R. for the sum of 30*l.* of like lawful money of Great Britain, in contempt of our said Lord the King and his laws, to the evil example of all others in the like case offending, and against the peace of our said Lord the King, his crown and dignity.

FORGING * AND COUNTERFEITING.†

Middlesex } The jurors for our Lord the King, upon their
(*to wit.*) } oath present, that Peter Moller, late of the
parish of Saint Clement Danes, in the county of Middle-

For soliciting and inviting a person to commit a misdemeanor, by engraving a plate in imitation of the promissory notes of a foreign bank, by 43 Geo. 3. c. 139.

described *eo nomine*; that at all events the mere abstract fact of re-selling cannot alone constitute any offence, but that the *evil intent to raise the price of provisions* must be the gist of the charge. If so, it must indeed be so averred in the indictment; but, independent of its not having been usual in precedents of this specific kind, such an averment, it should appear, would be somewhat problematical. See 2 Chit. C. L. 536, *note*.

* **FORGERY** is an offence by the common law, in falsely and fraudulently making or altering any manner of record, or any other authentic matter of a public nature; as a parish register, or any deed, will, privy seal, certificate of holy orders, protection of a parliament man, and the like. 1 Haw. c. 70. To which many other instances have been added by statute.

The counterfeiting of any writing with a fraudulent intent, whereby another may be prejudiced, (it is immaterial whether the party be actually injured, or not) is also a forgery at common law; as a bill of lading, and acquittance, a warrant of attorney, a marriage register, a bill of exchange, letters of credit to gather money, and others of a similar kind. 2 Ld. Raym. 1461. 2 Str. 747. 2 East's P. C. c. 19.

But it is settled that justices of the peace have no jurisdiction over forgery at the common law; inasmuch as the chief end of the institution of the office of these justices was for the preservation of the peace against personal wrongs and open violence, or at the most to extend to such other offences only as have a direct and immediate *tendency* to cause breaches of the peace. 2 Haw. c. 8. 1 Salk. 406. And this was confirmed in the case of Micah Gibbs, 1 E. R. 173. where it was determined that the sessions have no jurisdiction over the offence of forgery at common law, nor can they take cognizance of it as a cheat.

Nor have they cognizance of forgery by the statute 5 Eliz. c. 14. R. v. Smith, Cro. Eliz. 87.—R. v. Higgins. 2 E. R. 18; and by most

sex, labourer, heretofore, to wit, on the twenty-seventh day of May, in the fifty-ninth year of the reign of our

of the modern statutes it is felony *sans* clergy.—There are however certain offences of an inferior atrocity connected with it, or arising out of it, which come within the design of this work.—The 41 Geo. 3. c. 57. enacts, that if any person shall make a frame, or mould, or part of such machine, for the making of paper with the name of any person or firm, carrying on the business of bankers, visible on the face of it, without a competent authority in writing; or manufacture, or sell, any such paper, or by any art procure the name of a banker to be visible on the substance of paper, he shall, for the first offence, be imprisoned for any time not exceeding two years, nor less than six months, and for the second offence, be transported for fourteen years. s. 1. By the same act, the engraving, or in any manner making upon a plate, any note or instrument for payment of money, or part of it, as of a banker—the using any plate so engraved—having it in custody—and the uttering of any note thus fabricated—are to be visited with similar penalties. s. 2. And to trace, by any contrivance, subscriptions subjoined to any banker's bill or note expressed to be payable to the bearer on demand on a plate, or to have such plate in possession, without being able to prove, that it came there by innocent means, is punished for the first offence with imprisonment from three to twelve months, and for the second with transportation for seven years. s. 3.

The 43 Geo. 3. cap. 139. makes the counterfeiting or uttering any foreign bill, *promissory note*, or order for payment of money a single felony, and punishes it with transportation for fourteen years. s. 1. And, by the same act, engraving, or by any device making plates for the fabrication of *any of the above instruments*, for the first offence is made a *misdemeanor*, punishable with imprisonment for any time not exceeding six months, fine, or whipping, and for the second offence, transportation for fourteen years is directed. s. 2.

† COUNTERFEITING the coin current in the realm is also an offence, respecting which little may suffice here, as not being usually cognizable by courts of session of the peace. As, in the instance of forgery, however, inferior kinds and degrees of offence are connected with it, which are commonly subjects of indictment before that jurisdiction.

By 15 Geo. 2. c. 28. if any person shall utter, or tender in payment, any false or counterfeit money, knowing the same to be so, and be convicted, he shall suffer six months imprisonment, and find sureties for his good behaviour for six months' more; and if the same person be convicted a second time, he shall suffer two years' imprisonment, and find sureties for his good behaviour for two years more; and if the same

Sovereign Lord George the Third, by the grace of God of the United Kingdom of Great Britain and Ireland, King, Defender of the Faith, with force and arms, at the parish aforesaid, in the county aforesaid, did unlawfully solicit, incite, and endeavour to persuade one Robert Scott feloniously, against the form of the statute in such case made and provided, to falsely make, forge, and counterfeit, within the United Kingdom of Great Britain and Ireland, a certain promissory note, purporting to be the promissory note of a certain foreign state, to wit, the state of Norway, with intent to deceive and defraud the said foreign state, in contempt of our said Lord the King and his laws, to the evil example of all others, and against the peace of our said Lord the King, his crown and dignity.*

person offend a third time, and be convicted, he shall be adjudged guilty of felony without benefit of clergy. § 2, 3, 4, 5.

Or if any person shall utter or tender in payment any false or counterfeit money, knowing the same to be so, and either the same day, or within ten days then next, offer or tender any more, or other false or counterfeit money, knowing the same to be so, or at the time of such uttering or tendering, having about him in his custody one or more pieces of counterfeit money besides what was so uttered, such person shall be deemed a common utterer of false money; and, being convicted, shall suffer a year's imprisonment, and find sureties for his good behaviour for two years more; and, for a second offence, be adjudged guilty of felony without benefit of clergy: but this is not to work corruption of blood or loss of dower, and there shall not be any prosecution, unless it be commenced within six months: but persons guilty of the said crimes shall be tried and convicted in such manner as is used against offenders for counterfeiting the same: and the clerk of the assize, or clerk of the peace, where the first conviction was had, shall certify the same by a transcript in few words, containing the forms of such conviction, (for which he shall have 2s. 6d.), and such certificate being produced in court, shall be sufficient proof of the former conviction. 15 Geo. 2. c. 28. 37 Geo. 3. c. 126.

From this direction to the clerk of the peace, it is clear that the sessions have the same jurisdiction to enquire of such of the offences which are here punished as misdemeanors, as they had before the passing of this act, although there are no express words relating thereto; for the uttering of counterfeit money was always considered as a cheat or misdemeanor at common law, punishable by fine and imprisonment. E. P. C. 147. 159. 179. It is not necessary to aver that the defendant is a common utterer. R. v. Smith, 2 B. & P. 128.

* This indictment was tried at the Middlesex Michaelmas session

Seventh count. And the jurors aforesaid, upon their oath aforesaid, do further present, that the said Peter Moller heretofore, to

1819, and was stated to have been penned by, or at least to have received the sanction of, the Attorney and Solicitor General. The prosecution was instituted by the Treasury. The facts of the case, as they appeared from the evidence of Mr. Robert Scott, the person on whom the attempt to *incite and solicit* was made, was as follow: On the 27th of May last, the defendant came to his house and asked him whether he could copy curious engravings? He replied in the affirmative. He believed that the defendant was induced to come to him in consequence of his (witness's) having published a specimen of a note for the Bank of England, extremely difficult of imitation, and as an effectual prevention of forgery. Upon receiving the answer in the affirmative, the defendant produced a genuine note of the Drontheim Bank, in Norway, for the payment of ten dollars, and inquired if he could make an accurate engraving of it on wood. He was told that he could; and he then inquired if witness could procure different sorts of paper, to which he received a similar answer. Upon which he gave witness directions to make an engraved copy of the note produced, which appeared to be an impression from a curious wood engraving, on yellow paper, in the Danish language, to the following effect: "Ten Specie in Dollars."—"In conformity with the foundation of 1816, pay Norway's Bank, at Drontheim, to the bearer, ten specie dollars, for which the value is lodged at Drontheim." "No. 41,224." To this note there were some manuscript signatures. Witness, when he first saw the defendant, asked his name and address, which he declined to give, but said that he alone would be responsible, and that no harm could come to witness, and added, that money was no object. In the course of further conversation defendant said, that, having been defrauded by the Drontheim Bank, he had determined to resort to this expedient as a mode of revenge, and hinted that there were other persons connected with him. Witness, before he would undertake the business, said he would take a day to consider of it, and desired the defendant to call again. In the mean time he communicated the circumstances to some friends, and consulted with them what course he should pursue, suspecting that the defendant was connected with a gang of conspirators to defraud the Drontheim Bank. Upon consideration it was resolved that he should undertake the business to a certain extent, as a means of bringing the defendant to justice; and when he called the next day, he was told that witness would undertake it. Witness then asked what number of notes he would wish to have taken off the cut when done, in order that he might bespeak a sufficient quantity of paper, which was to be very peculiar in its texture and colour. The defendant said he should want about 3000 at first; that he intended going abroad with

wit, on the said twenty-seventh day of May, in the fifty-ninth year aforesaid, with force and arms, at the parish

them, and would return about the end of six weeks, and give further orders. Witness went on with the plate, and in the progress of the work the defendant called repeatedly and gave his orders. The plate being nearly finished, the defendant asked whether witness could also engrave the numbers and fac-similes of the signatures to the genuine note, and being told that *that* also could be done, he gave orders accordingly. Before the plate was completed, and before any impressions were taken from it, witness communicated what was going forward to the Danish Envoy, and in consequence of the information so received the defendant was apprehended, and the present prosecution was the result.

There were three sets of counts, in number sixteen, of which the three principal ones are here given, the others only laying the same charges in different ways.

Three objections were taken by counsel to the indictment: 1. That the note produced was not a *promissory note*, according to the true nature and import of such an instrument. 2. Supposing it to be a promissory note, for any thing that appeared to the contrary, it might be the note of a private individual named Norway, and not a note of the National Bank of Norway; and, 3. That there was no averment or proof that the defendant had not had authority from the Drontheim Bank, to prepare the alleged forgery. As to the first objection, upon which he mainly relied, he insisted that it was fatal to the indictment. In all the numerous counts, the instrument alleged to have been counterfeited, was designated only and expressly to be a *promissory note*, and not one of them had called it a *security for the payment of money, &c.* pursuant to the language of the act. The court were bound to construe the import of the note produced *strictly* according to its meaning, *as expressed upon the face of it*, and not by a reference to the understanding of the witness examined, who merely stated, that, according to his notions, the note was a promissory note, and passed as such in Norway. The other objections, though not so strong, were, however, deserving of serious consideration in a case of this description.

The court was of opinion, that the second and third objections were not tenable, but the first appeared to be of weight; however that the jury was the proper tribunal to determine the question, whether the instrument was in fact a promissory note, and charged them accordingly to determine that question, calling in aid of their judgment their own experience of mercantile transactions, and their knowledge of instruments of the like kind, used in the ordinary dealings between tradesmen in this country. If they were of opinion, that the note was a promissory note, as explained by the evidence they had heard, they

aforesaid, in the county aforesaid, did unlawfully make, cut, and engrave, and cause and procure to be made, cut, and engraved a certain block, in order and with the intent feloniously, against the form of the statute in such case made and provided, to falsely make, forge, and counterfeit, within the United Kingdom of Great Britain and Ireland, a certain promissory note, purporting to be the promissory note of a certain foreign state, to wit, the state of Norway, with intent to deceive and defraud the said foreign state, in contempt of our said Lord the King, and his laws, to the evil example of all others, and against the peace of our said Lord the King, his crown and dignity.

Thirteenth
count.

And the jurors aforesaid, upon their oath aforesaid, do further present, that the said Peter Moller heretofore, to wit, on the said twenty-seventh day of May, in the fifty-ninth year aforesaid, with force and arms, within that part of the United Kingdom of Great Britain and Ireland called England, to wit, at the parish aforesaid, in the county aforesaid, did engrave, cut, and make, and cause, and procure to be engraved, cut, and made, and knowingly aid and assist in the engraving, cutting, and making, in and upon a certain plate, a certain part of a certain promissory note, in a certain foreign language, to wit, the Danish language, purporting to be the promissory note of a certain foreign state, to wit, the state of Norway, that is to say, the part thereof following :

(Here a Fac Simile of the note inserted.)

In English as follows, that is to say,

10 Specie Dollars,

In conformity with the Foundation of 1816, pays Norway's Bank in Drontheim to the bearer against this Note Ten Specie Dollars, for which value in the Bank is received, Drontheim, year No. . . .

were bound to find the defendant guilty ; but if not, he was entitled to an acquittal.

The jury returned a verdict of guilty ; and no further resistance to the judgment being insisted on, sentence of a year's imprisonment was passed on the defendant.

without an authority in writing for that purpose from the said foreign state, or from any person duly authorized to give any such authority, in contempt of our said Lord the King and his laws, to the evil example of all others, against the peace of our said Lord the King, his crown and dignity, and also contrary to the form of the statute in such case made and provided.

County of } That A. B., on, &c. with force and
(to wit.) } arms, &c. at, &c. one piece of false and counterfeit money, made and counterfeited to the likeness and similitude of a piece of good and lawful and current

For a misdemeanour in uttering a counterfeit shilling, on 15 Geo. 2. c. 28.*

* We have seen that, by 15 Geo. 2. c. 28. "if any person shall utter, or tender in payment, any false or counterfeit money, knowing the same to be so, he shall suffer six months' imprisonment, and find sureties for good behaviour for six months further; and, on conviction for a second offence, shall suffer two years' imprisonment, and find sureties for two years more; and, on conviction for a third offence, shall be adjudged guilty of felony without benefit of clergy, § 2 And by sect. 3. that if any person shall utter, or tender in payment, any false or counterfeit money, knowing the same to be so, and shall either the same day, or within ten days then next, utter or tender in payment any more or other false or counterfeit money, knowing the same to be so; or shall at the time of such uttering or tendering have *about him, in his custody*, one or more pieces of counterfeit money, besides what was so uttered or tendered, he shall be deemed and taken to be a common utterer of false money; and shall suffer a year's imprisonment, and find sureties for his good behaviour for two years more; and, for a second offence, he shall be adjudged guilty of felony without benefit of clergy. It is to be observed that, this act extends only to gold and silver. 2 Leach, 834. n. a. 1 E. P. C. 182. The tendering or uttering foreign counterfeit coin is now made subject to nearly the same regulations. 37 Geo. 3. c. 126. All prosecutions under 15 Geo. 2. c. 28. must be commenced within six months; but information before a magistrate is commencement of prosecution within the meaning of the statute. 1 E. P. C. 186. If two utterings be charged on the same day, each in a different count, there cannot be judgment against the defendant on the 3d section of 15 Geo. 2. c. 28. as for two distinct acts, without a precise averment of the fact. 2 Leach, 833. 1 E. P. C. 182. 3 Esp. R. 28. But for this purpose it is not necessary to aver that the defendant was a *common utterer*, in the

money and silver coin of this realm called a shilling, as and for a piece of good, lawful, and current money and silver coin of this realm called a shilling,* unlawfully, unjustly, and deceitfully did utter to one C. D.; he the said A. B., at the time when he so uttered the said piece of false and counterfeit money, then and there well knowing the same to be false and counterfeit; against the form of the statute, &c. and against the peace, &c. [*Another count, for uttering another false and counterfeit shilling within ten days; and if there were several utterings on the same day to different persons, the different utterings may be separately stated; or as the facts may be.*]

For a misdemeanor in uttering counterfeit shillings twice or more within ten days, under 15 Geo. 2. c. 28. s. 3.

County of } [The same precisely as in the preceding, (to wit.) } to the asterisk.]

And that he the said A. B., on the same first day of January, in the fifty-sixth year aforesaid, with force and arms, at, &c. aforesaid, one other piece of false and counterfeit money, made and counterfeited to the likeness and similitude of a piece of good, lawful, and current money and silver coin of this realm called a shilling, as and for a piece of good, lawful, and current money and silver coin of this realm called a shilling, unlawfully, unjustly, and deceitfully did utter to one C. D., he the said A. B., at the time when he so uttered the said last mentioned piece of false and counterfeit money then and there well knowing the same to be false and counterfeit; against the form of the statute, &c. and against the peace, &c. And that the said A. B., on the same, &c. with force and arms, at, &c. aforesaid, one other piece of false and counterfeit money, made and counterfeited to the likeness

language of the statute, that being a conclusion of law from the facts stated. 2 Leach, 858. 1 E. P. C. 183. 2 B. & P. 127. Proof of more than one uttering in a day may be offered to show that the act was knowingly done, though but one uttering be laid in the indictment 1 New. Rep. 95.

* This will suffice, without averring a tender in payment, for the words of the act are in the disjunctive, "utter" or "tender in payment," 2 Leach, 644.

and similitude of a piece of good, lawful, and current money and silver coin of this realm called a shilling, as and for a piece of good, lawful, and current money and silver coin of this realm called a shilling, unlawfully, unjustly, and deceitfully did utter to one E. F., he the said A. B., at the time when he so uttered the said last mentioned piece of false and counterfeit money, then and there well knowing the same to be false and counterfeit; against the form, &c. and against the peace, &c.

County of } [Same also as the preceding, to the For a misde-
 (to wit.) } asterisk.] And* that he the said A. B., 15 Geo. 2. c. 28.
 at the time when he so uttered the said piece of false and s.3. for uttering
 counterfeit money as aforesaid, to wit, on the said, &c. at, counterfeit
 &c. had about him the said A. B., in the custody and pos- half-crowns,
 session of him the said A. B., one other piece of false and having another
 counterfeit money, made and counterfeited to the likeness in possession.
 and similitude of a piece of good, lawful, and current money
 and silver coin of this realm called an half-crown, he the
 said A. B. then and there well knowing the said last men-
 tioned piece of false and counterfeit money to be false and
 counterfeit; in contempt, &c. and against the form of the
 statute, &c. and against the peace, &c.

County of } That P. Q., being an evil disposed For a misde-
 (to wit.) } person, on, &c. at, &c. did unlawfully meanor at
 and deceitfully, with intent to defraud one A. B., utter and common law in
 expose, and cause and procure to be uttered and exposed causing guineas
 to the said A. B., nine pieces of gold, for and as good and filed and di-
 true guineas, of the proper money of this realm, notwith- minished to be
 standing none of the said nine pieces of gold, at the said uttered as good
 time when they were so uttered and exposed, and caused guineas.

* The several utterings must be charged in the same count, and not in different counts, or the judgment can only be given for six months' imprisonment. 2 Leach, 833. 1 E. P. C. 182, 183.

and procured to be uttered and exposed, were good and true guineas, of the proper money of this realm; but each of them had been unlawfully filed, and by such filing diminished and rendered defective of their weight, which before such filing they had, being before such filing good and true guineas, of the proper money of this realm; he the said C. D., at the time he so uttered and exposed, and caused and procured to be uttered and exposed, the said nine pieces of gold as aforesaid, then and there well knowing that none of them were good and true guineas, but that each of them had been so as aforesaid filed, diminished, and rendered defective of their weight; to the evil example, &c. and against the peace, &c.

For a misdemeanour at common law in uttering a counterfeit half-guinea.

County of } That P. Q., being an evil disposed
(*to wit.*) } person, on, &c. one piece of false money, made of base metals, and coloured with a certain wash, producing the colour of gold, to the likeness and similitude of a piece of good, lawful, and current gold money and coin of this realm, called an half-guinea, unlawfully, unjustly, and deceitfully did utter and pay to one A. B., for and as a piece of good and lawful gold money and coin of this realm called an half-guinea, he the said C. D. then and there well knowing the said piece to have been false and counterfeit as aforesaid, to the great damage of the said A. B.; to the evil example, &c. and against the peace, &c.

For a misdemeanour at common law for uttering a counterfeit sixpence, and having another found in his custody.

County of } That P. Q. late of, &c. being an evil
(*to wit.*) } disposed person, on, &c. at, &c. one piece of false money, made of certain mixed base metals, counterfeited to the likeness and similitude of a piece of good, lawful, and current money and coin of this realm called a sixpence, unlawfully, unjustly, and deceitfully did utter and pay to one A. B., for and as a piece of good and lawful money and coin of this realm called a sixpence, he

the said P. Q. then and there well knowing the said piece to have been false and counterfeit, as aforesaid; to the great damage of the said A. B., and against the peace of our said Lord the King, his crown, and dignity.

County of } That P. Q. being, &c. on, &c. at, &c. *For a misde-*
(to wit.) } unlawfully had in the custody and pos- *meanour in*
 session of him the said P. Q., divers, to wit, seven pieces of *having counter-*
 false money, made of mixed base metals, counterfeited to *feit money in*
 the likeness and similitude of good, lawful, and current *possession with*
 moneys and coins of this realm called sixpences, he the said *intent to utter*
 P. Q. then and there well knowing the said pieces of money *it.**
 so in his custody and possession, and so counterfeited to the
 likeness and similitude of good and lawful and current
 money and coins of this realm called sixpences, to have
 been false and counterfeit as aforesaid, with an intent to
 utter and pay the said pieces of false and counterfeit money
 to the subjects of our said Lord the King; to the great
 damage, &c. in contempt of our said Lord the King and
 his laws, to the evil example of all others in the like case
 offending, and against the peace of our said Lord the King,
 his crown, and dignity.

County of } That C. D. late of, &c. after the day *For felony in*
(to wit.) } of which was in the year of our Lord *putting off*
 to wit, on, &c. with force and arms, at, &c. three hun- *false copper at*
 dred and thirty-three pieces of false and counterfeit copper *a lower rate*
 money, each and every of them made and counterfeited to the *than by its de-*
 likeness and similitude of the good, legal, and current money *nomination it*
imported, on
11 Geo. 3. c. 40,

* It has been observed, in an anterior page, that the intent to commit a felony or misdemeanour, is itself a misdemeanour. The offence, therefore, comprehended in this indictment, may be prosecuted as a substantive, integral one, or it may be added by way of second count to the count immediately preceding, according to the circumstances of the case.

and copper coin of this realm called an halfpenny, the same counterfeited pieces of copper money *not being then melted down or cut in pieces,** then and there unlawfully and feloniously did sell, pay, and put off to one A. B. at a lower rate and value than the same counterfeited pieces of copper money did, by their denomination import and were counterfeited for, that is to say, for one piece of current gold coin of this realm called an half-guinea, being of the vale of ten shillings and sixpence; against the form, &c. and against the peace, &c. And the jurors aforesaid, upon their oath aforesaid, do further present, that the said C. D., after the said day of which was in the year of our Lord to wit, on the said, &c. with force and arms, at, &c. aforesaid, three hundred and thirty-three pieces of false and counterfeit copper money and coin, each and every of them made and counterfeited to the likeness and similitude of a piece of good, lawful, and current money and copper coin of this realm called an halfpenny, the same counterfeited pieces of copper money not being then melted down or cut in pieces, then and there unlawfully and feloniously did sell, pay, and put off to one A. B., at the rate of three hundred and thirty-three of such pieces of counterfeit copper money for one piece of current gold money and coin of this realm called an half-guinea, being of the value of ten shillings and sixpence, being a lower rate and value than the same counterfeited pieces of copper money did, by their denomination import, and were counterfeited for; against the form, &c. and against the peace, &c.

For a misdemeanour in buying guineas, on 52 Geo. 3. c. 50. ‡

County of } [Commencement as ante.] Unlaw-
(to wit.) } fully did pay to one A. B., for five pieces
of gold coin, lawfully current within this realm, called gui-

* To sell, pay, or put off any counterfeit copper money, *not melted down or cut in pieces, at or for a lower rate or value than the same by its denomination doth import*, or was counterfeited for, shall be felony, but clergyable. 11 Geo. 3. c. 40. 1 Leach, 102.

† Same as the first, except saying, "copper money and coin," and "at the rate of 333 of such pieces, &c. See 2 Chit. C. L. 117. and Starkie, 530.

‡ See 14 East, 402.

neas, by their denomination importing to be of the value of five pounds and five shillings, more in value, benefit, profit, and advantage, than the true, lawful value, which such pieces of gold coin, by their denomination imported to be of, to wit, one piece of silver coin, of lawful money of Great Britain, called a shilling, of the value of one shilling, twenty-two pieces of silver coin, called Spanish dollars, of the value of 5s. 6d. each, one piece of silver coin, called a Spanish half-dollar, of the value of 2s. 6d. and [*&c. &c. as the case may be,*] against the form, &c. and against the peace, &c.

FRIENDLY SOCIETIES.

County of } That one A. B., before the making
(to wit.) } of the order hereinafter mentioned, had Against stewards, &c. of a friendly society for disobedience to an order of justices.*
been, and was admitted, a member of a certain friendly society, called the Royal Oak Society, established at
in the county of by virtue of a certain act of parliament, made and passed in the parliament of our Lord the King, holden at Westminster, in the county of Middlesex, in the thirty-third year of the reign of our said Lord the King; entitled An Act, &c. [*insert the title of the act of 33 Geo. 3. c. 54.*] the rules, orders, and regulations of which society were *duly confirmed*, according to the directions of the said act of parliament.†

* As to this being an indictable offence, see 4 T. R. 202. But by 49 Geo. 3. c. 124. s. 1. two justices are empowered, if the officer of any such society neglect or refuse to appear on summons for that purpose duly served on them, or having appeared, to make a sufficient defence in answer to the complaint, to grant a warrant of distress against the goods of the offender, in order to levy the sum adjudged to the complainant, with all costs attending the complaint.

† The time for confirmation was limited by this act; extended by 35 Geo. 3. c. 111. and rendered unlimited by 49 Geo. 3. c. 125. so that if the society was established at a later period, and their rules confirmed under the authority of either of the posterior acts, it must be so stated. As to societies *recently* established, see 59 Geo. 3. c. 128. whereby petty sessions are empowered to carry into effect the rules of these socie-

And the jurors, &c. do further present, that the said A. B., having been admitted a member of the said society, as aforesaid, before the making of the order hereinafter mentioned, had been expelled from the said society, and deprived of certain relief and maintenance, to which he considered himself entitled from the stewards of the said society for the time being, and other officers and members thereof, and the said A. B. thought himself aggrieved thereby, and thereupon made complaint thereof to P. Q. and X. Y., Esqs. two of his Majesty's justices of the peace, assigned, &c. in the said, &c. in which the said society was established as aforesaid, against M. M., late of, &c. and W. W., late of, &c. who then, and from thence, until, and at the time of the disobedience of the order hereinafter mentioned, were stewards of the said society, and O. O., late of the same place, &c. who then, and during that time, was clerk to the said society; and the said defendants were thereupon *duly summoned*, according to their respective Christian and surnames respectively,* by the said justices, to appear before them at a *convenient time and place named in such summons*, they the said defendants, or some or one of them, appearing to such justices to have the custody of the said rules, orders, and regulations of the said society, and the said defendants *had not appeared* before the said justices, pursuant to the said summons, to wit, at, &c.† And the jurors, &c. do further present, that thereupon, heretofore, to wit, on, &c. at, &c. the said defendants so being such justices as aforesaid, on proof upon oath of such

ties, those rules being conformable with general rules of quarter sessions previously promulgated, and also the calculations on which the benefits of the particular society are to be enjoyed, with the approbation of two actuaries, duly authenticated.

* By s. 4. of 49 Geo. 3. c. 125. it is required that the summonses shall be served upon the officers of those societies in the *proper name or names* of such officers.

† It is scarcely necessary to observe, that if the parties summoned do appear, but do not shew sufficient cause why the order should not be made, and it be actually made, the allegations must be conformable with the facts.

summons as aforesaid being duly served, did proceed to hear and determine the matter of the aforesaid complaint, according to the true purport and meaning of the said rules, orders, and regulations of the said society, and the directions of the said act (*or acts*) of parliament, and did thereupon, then and there, make a certain order in writing, under their hands and seals, directed to the said, &c. so being stewards of the said society, and to the said, &c. so being clerk thereof, as aforesaid, and all other persons whomsoever, being officers or members of the said society, whereby after reciting amongst other things, that, &c. [*recite the order,*] as by the said order of justices fully appears, of which order the said defendants heretofore, to wit, on, &c. at, &c. had notice. And the jurors, &c. that the said, &c. so being stewards of the said society, and the said, &c. so being clerk thereof as aforesaid, well knowing the premises, but not regarding the said order, nor the said act (*or acts, as the case may require,*) of parliament, did not, nor would, nor did, nor would either of them personally, or otherwise, be or appear before the said justices, at the time and place, in that behalf above mentioned: nor did, nor would, then and there produce before them, the said justices, for their inspection, such books, papers, and writings as aforesaid, or any, or either of them, or in any respect comply with, or obey, or regard the same order, as they could, and might, and ought to have done, but wholly refused and neglected so to do, and herein then and there wholly failed and made default, contrary to the form of the said order, and the said statute (*or statutes,*) in such case made, &c. and against the peace, &c.

INDECENCIES.*

County of } The jurors, &c, that G. O., late of, Indictment at
(to wit.) } &c. butcher, on &c. and continually common law
afterwards until the day of the taking of this inquisition at, bath breaker
and prophaner
of the Lord's

* This general title has been introduced, in order to comprise under it day, in keeping precedents of indictments for several species of misdemeanours, which open shop.

&c. was and yet is a common sabbath breaker and profaner of the Lord's day commonly called Sunday, and that the said G. O. on the said, &c. being the Lord's day, and on divers other days and times being the Lord's days, during the time aforesaid, at, &c. in a certain place there called the flesh-market, did keep a common public and open shop, and in the same shop did then and on the said other days and times being the Lord's days, there openly and publicly sell and expose to sale, flesh meat * to divers persons to the jurors aforesaid as yet unknown, to the evil example of all others in the like case offending, to the common nuisance of all the liege subjects of our said Lord the King, and against the peace of our said Lord the King, his crown and dignity.

Indictment at
common law
for misbehaviour
at church
and disturbing
the minister
while reading
divine service.

County of } That A. B., late of, &c., C. D., late of,
(*to wit.*) } &c. and E. F., late of, &c. did on, &c.,
&c. being the Lord's day, commonly called Sunday, with
force and arms, at, &c. wickedly, irreligiously, and in contempt of public worship, and blasphemously toward God, in the parish church there during the celebration of divine service, divers, to wit, three footstools commonly called and known by the name of hassocks, the property of one P. Q. in a certain pew of him the said P. Q. then and there being, from the proper place unlawfully and unjustly did remove, and also then and there did throw and cast the said footstools commonly called hassocks, at and among the congregation then and these assembled, and did thereby,

would not be sufficiently numerous to be divided into different specific heads; and which, therefore, in a work of such contracted limits, it was conceived would be more perspicuously arranged under a common title, which, *ex vi termini*, might be adapted to the comprehension of them all.

* Profanations of the sabbath are generally punishable summarily before a magistrate, but no doubt has ever been entertained that keeping an open shop and selling publicly on that day, is a breach of decency at common law and a nuisance, being so before any statutes were made on the subject indictable. 4 Black. Com. 63. 1 E. P. C. c. 5.

and by means thereof, unlawfully and irreverently occasion a great disturbance, and did obstruct and hinder one X. Y., clerk, then and there being minister of the parish church aforesaid, in the execution of his office, and in the reading of divine service, in contempt of decency and the laws of this realm, to the evil example of others, &c. and against the peace, &c.

County of } That A. B., late of, &c. and C. D.,
 (to wit.) } late of, &c. on, &c. with force and arms,
 at, &c. did during the time of divine worship, unlawfully,
 wilfully, maliciously, and contemptuously disquiet and disturb a certain congregation of Protestant dissenters from the church of England, being then and there lawfully assembled for the purpose of religious worship, in a certain chapel, situated, standing, and being in the parish aforesaid, in the county aforesaid, the said chapel being then and there duly certified, and registered, pursuant to the statute in such case made and provided,* in contempt of public worship, to the evil example, &c. against the form of the statute, &c. and against the peace, &c. And the jurors aforesaid, upon their oath aforesaid, do further present, that the said A. B. and C. D. afterwards (to wit) on

For disturbing dissenting congregation on statute 52 Geo. 3. c. 155.

Second count.

* The 52 Geo. 3. c. 155. § 12. enacts, "that if any person or persons do and shall wilfully and maliciously or contemptuously disquiet or disturb any meeting, assembly, or congregation, of persons assembled for religious worship, permitted or authorized by this act, or any former act or acts of parliament, or shall in any way disturb, molest or misuse any preacher, teacher, or person officiating at such meeting, assembly or congregation, or any person or persons there assembled, such person or persons so offending upon proof thereof before any justice of the peace, by two, or more, credible witnesses, shall find two sureties to be bound by recognizances, in the penal sum of fifty pounds, to answer for such offence, and in default of such sureties shall be committed to prison, there to remain till the next general or quarter sessions, and upon conviction of the said offence at the said general or quarter sessions, shall suffer the pain and penalty of forty pounds." It is not necessary in support of the above indictment to prove the taking of the oath required by the act; but if proved, it must be by the record, and not by parol evidence. Peake. R. 132.

the said, &c. with force and arms, at, &c. did, during the time of divine worship, unlawfully, wilfully, maliciously, and contemptuously disquiet and disturb a certain other congregation of Protestant dissenters from the church of England, being then and there duly and lawfully assembled, for the purpose of religious worship, in a certain meeting-house situate, standing, and being in the parish, aforesaid, in the county aforesaid, the said last mentioned meeting-house being then and there duly certified and registered pursuant to the statutes in such case made and provided, in contempt of public worship, to the evil example, &c. against the form of the statutes, &c. and against the peace, &c.

For a libel on
the King.

County of } That O. P., late of &c. being a
(to wit.) } wicked, malicious, seditious, and evil
disposed person, and greatly disaffected to our said Lord the King and to his administration of government of this kingdom, and unlawfully, maliciously and seditiously contriving, devising and intending to scandalize, traduce, and vilify our said Lord the King,* and to alienate and withdraw the fidelity, affection and allegiance of his said Majesty's subjects, from his said Majesty's person and government, on, &c. at, &c. unlawfully, maliciously, and seditiously did publish and caused to be published a certain pamphlet entitled, [*here mention the title of the work verbatim*] containing therein, among many other things, certain scandalous, malicious, inflammatory and seditious matters of and concerning our said Lord the King,† that is to say, [*here*

* Indecent writings published, and like words uttered, against the monarch and other persons exercising the power of the government of the country, were conceived to be more appropriately comprehended under this title, than under that of *LIBEL*, which latter is, therefore, in this work, wholly confined to *private* libels, or libels on subjects.

† These words in italics make a necessary part of every indictment for a libel. If omitted, they cannot be supplied by its being alledged in the introductory part, that the defendant "*intended to vilify*" the person actually the subject of the libel; nor by a conclusion that it is "*to the injury, &c. of such person*, or other words to *that*, or similar effect. *R. v. Marsden*, 4 M. & S. 164.

*set out libel with proper inuendoes,]** in contempt of our said Lord the King and his laws, to the evil and pernicious example of all others in the like case offending, and against the peace of our said Lord the King, his crown and dignity. And the jurors aforesaid upon their oath aforesaid, Second count. do further present, that the said O. P. so being such a person as aforesaid, and so devising, contriving, and intending as aforesaid, afterwards, to wit, on, &c. aforesaid, at, &c. unlawfully, maliciously, and seditiously did publish and cause and procure to be published, a certain other printed pamphlet containing therein amongst other things, certain

* An *inuendo*, says Chitty, (2 C. L. 310.) and Russel, (C. & M. 1788.) is defined to be a mode of explaining some matter already expressed; it serves to point out where there is precedent matter, but can never introduce a new charge; it may elucidate what is already averred, but cannot add to, or enlarge, or alter, its sense. 2 Salk, 513. 1 Ld. Raym. 256. 12 Mod. 139. 9 E. R. 95. It signifies nothing more than the words, "*id est*," "*scilicet*," or "meaning," or "aforesaid," as explanatory of a matter already set forth; as C. D. (*meaning the defendant*,) or that subject, (*meaning the subject in question*) Cowp. 684. And, therefore, if it be intended to explain any thing, the matter must first be put on the record for it to explain; thus the words, "he has burnt *my* barn," cannot by *inuendo* be taken to mean a *barn full of corn*, 4 Co. 20. a. but if it had been stated before by way of inducement, that the owner had a barn full of corn, and then the *inuendo* had referred to it as such, the meaning would have been complete. 1 Saund. 242. 1 Chitty on pleading, 383. And if any use be made of the *inuendo* which is thus imperfect, it cannot be rejected as surplussage, nor will it be cured by verdict, 1 Ld. Raym. 256. Thus, if a place be named as N., and afterwards explained by *inuendo*, to mean N. in Devonshire, though, in the assignment of perjury, it be stated generally that the defendant was not at N., it will be taken to refer to the whole *inuendo*, and if that be defective, the error will be fatal, 1 Ld. Raym. 261. However, where the oath of the defendant was that he had been arrested before he got to his own house, in the parish of St. Martin's-in-the-fields, an *inuendo* his house in the Hay-market, in St. Martin's, &c. is good as only a more particular description of the same house: so an oath being that the defendant was arrested upon the steps of his own door, an *inuendo* that it was the outer door is good, 1 T. R. 70. But where the *inuendo* and the matter it introduces are altogether impertinent and immaterial, it may be rejected as superfluous, 1 T. R. 68. 9 East. 92.

scandalous, malicious, inflammatory and seditious matters of and concerning our said Lord the King according to the tenor and affect following, that is to say, [*state other libellous matter with different inuendoes,*] in contempt of our said Lord the King and his laws, to the evil example of all others in the like case offending, and against the peace of our said Lord the King, his crown and dignity.

For seditious
words spoken
of the King,
&c.

County of } That A. B., late of, &c. labourer,
(to wit.) } being a wicked, seditious, and evil dis-
posed person, and greatly disaffected to our said Lord the
King, and contriving and intending the liege subjects of
our said Lord the King, to incite, and move to hatred and
dislike of the person of our said Lord the King,* and of
the government established within this realm, on, &c. with
force and arms, at, &c. in the presence and hearing of divers
liege subjects of our said Lord the King, maliciously, un-
lawfully, wickedly, and seditiously did publish, utter, and
declare with a loud voice, of, and concerning our said Lord
the King, these words following (that is to say) "his Ma-
jesty George the (meaning our said Lord the King,
is * * * *, thank God for it, I (meaning the said A. B.) hope
he (meaning our said Lord the King) will soon be no more,
damnation to all royalists;" to the great scandal of our
said Lord the King, in contempt of our said Lord the
King, and his laws, to the evil and pernicious example of

* Speaking contemptuously of the King, is by cursing him, or the like, or giving out (*publicly declaring*) that he wants steadiness, wisdom, or valour, or in general doing any thing which may lessen him in the esteem of his subjects, and weaken his government, or raise jealousies between him and his people, is highly criminal, and punishable with fine and imprisonment, 1 Hawk. 23.

By 60 Geo. 3. c. 8. A second conviction for composing, publishing, or printing blasphemous or seditious libels against the King, the Regent, the government, the constitution, or church, or state, or either house of parliament, is rendered liable to fine, and imprisonment, or to banishment, at the discretion of the court of oyer and terminer, or gaol delivery, or in the court of King's Bench, before which tried and convicted.

all others, in the like case offending, and against the peace;
 &c. [*second count.*] That the said A. B. being such wicked, Second count.
 seditious, and evil-disposed person as aforesaid, and greatly
 disaffected to our said Lord the King, and contriving and
 intending the liege subjects of our said Lord the King to
 incite and move to hatred and dislike of the person of our
 said Lord the King, and the government established within
 this realm, on, &c. with force and arms, at, &c. unlawfully,
 wickedly, maliciously, and seditiously, in the presence and
 hearing of divers liege subjects of our said Lord the King,
 again did publish, utter, and declare of, and concerning
 our said Lord the King, and his good, true, and faithful
 subjects, these words following, that is to say, "I (meaning
 the said A. B.) hope King George the (meaning our
 said Lord the King) will soon be no more; damnation to
 all royalists." In contempt of our said Lord the King and
 his laws, to the great scandal of our said Lord the King
 and his government, to the evil example of all others in the
 like case offending, and against the peace, &c.

County of: } That A. B. late of, &c. being a wicked, For seditious
 (to wit.) } seditious, and ill disposed person, and words respect-
 having no regard for the laws of this realm, and most un- ing the King
 lawfully, wickedly, maliciously, and seditiously devising, and constitu-
 contriving, and intending to disturb the peace and tran- tion.
 quillity of our said Lord the King, and of this kingdom,
 and to bring our said Lord the King, and the house of
 commons of this realm, and the constitution, and govern-
 ment of this kingdom, as by law established, into hatred
 and contempt, with the subjects of this realm, and to asperse
 and vilify our said Lord the King, and the house of com-
 mons of this realm, and to alienate and withdraw the affec-
 tions and fidelity of his said Majesty's subjects, from his
 Majesty's person and government, on, &c. in order to com-
 plete, perfect, and bring to pass, his most wicked and sedi-
 tious contrivances and intentions aforesaid, in the presence
 and hearing of other subjects of our said Lord the King,
 unlawfully, wickedly, maliciously, and seditiously did say,

utter, and publish of and concerning the King and house of commons and constitution and government of this kingdom, the scandalous and seditious words following, to wit, I (meaning himself the said A. B.) think the King, (meaning our Sovereign Lord George the . . . King of Great Britain,) is an useless and expensive incumbrance, and the house of commons (meaning the house of commons of this realm,) is the most corrupt and abominable society in christendom, in contempt of our said Lord the King, and the said house of commons, and the constitution and government of this kingdom, and in contempt, &c. And the jurors, &c. that the said A. B. being a wicked, &c. as aforesaid, and again unlawfully, wickedly, and maliciously, and seditiously devising, contriving, and intending as aforesaid, afterwards to wit, on the said, &c. with force and arms, at, &c. aforesaid, in order to complete, perfect, and bring to effect his most wicked and seditious contrivances and intentions aforesaid, in the presence and hearing of divers subjects of our said Lord the King, unlawfully, wickedly, maliciously, and seditiously did say, utter, and publish, of and concerning the constitution and government of this kingdom, the scandalous and seditious words following, to wit, I (meaning himself the said A. B.) am for a revolution, no King, and no Lords, but an honest house of commons chosen by *all* the people, (meaning a revolution in the constitution and government of this kingdom, and that there should be no King and no Lords of this realm in the constitution, and government thereof, and that the House of Commons should be chosen contrary to the laws and customs of this realm, and in contempt thereof,) in contempt of, &c. and against the peace, &c. And the jurors, &c. that the said A. B. being, &c. as aforesaid, and again unlawfully, &c. did say, and utter, &c. the scandalous and seditious words following, to wit, I (meaning himself the said A. B.) despair of any good till the Bishops and Law Lords at least, (meaning the Bishops and Law Lords of Great Britain,) are sent a packing (meaning, are deposed and excluded from their seats in the Legislature of the kingdom) and a Republican Legislature, (meaning a Legislature with-

out a King, and without Bishops and Law Lords,) shall govern the nation, (meaning the British Nation,) in contempt, &c. and against the peace, &c.

County of..... } That heretofore, to wit, on, &c., a *For insulting a*
(to wit.) } special session of the peace was holden *justice in the*
 at.....in the county of.....before certain justices of *execution of*
his office.
 the peace of our Sovereign Lord the King for the said
 county of.....to wit, before P. Q., R. S., and X. Y.,
 and others their fellows, being justices as aforesaid of the
 county of.....aforesaid, who had then and there as-
 sembled and met together, with purpose and intent to au-
 thorize and empower certain persons, then and there also
 assembled and attending, to keep respectively in their re-
 spective parishes within the said county of.....certain
 common inns and alehouses, as by the laws of this realm
 the said justices, as aforesaid, were authorized and em-
 powered to do, at which said session so then and there
 holden as aforesaid, before the justices above named, and
 others their fellows as aforesaid, came A. B. of.....in
 the said county of.....yeoman; and the said A. B., on
 being then and there, to wit, at the said session so holden
 as aforesaid, before the said justices as aforesaid; de-
 manded a licence from the said P. Q., R. S., and X. Y.,
 and others their fellows so as before assembled, in order
 that he the said A. B. might be authorized and empowered,
 at a certain house known and distinguished by the sign of
 the White Swan, at the parish of.....in the said county
 of.....to sell ale for and during the year next ensuing;
 but the said P. Q., R. S., and X. Y., and others their
 fellows so then and there assembled, being justices of our
 said Lord the King for the county of.....aforesaid, then
 and there refused to grant any leave, licence, or authority to
 the said A. B. to sell ale, at.....aforesaid, in the county
 aforesaid, for the said year then next ensuing. Where-
 upon the said A. B., wickedly, and maliciously intending
 to traduce the authority, and impede the proceedings, as
 well as to vilify the characters of the said justices, so being

then and there in the due and proper execution of their duties, uttered and pronounced, and loudly published to the said justices so assembled and met together * as aforesaid, in the presence and hearing of divers of his Majesty's liege subjects, these false, scurrilous, and contemptuous words of and concerning the said P. Q., R. S., and X. Y., and others their fellows, justices as aforesaid, then and there assembled, and of and concerning the execution of their said duties, that is to say, "you are all (meaning the said P. Q., R. S., and X. Y., and others their fellows then and there assembled,) a parcel of tyrannical villains, and ought to be hanged for depriving a poor man of his bread" (meaning that the said P. Q., R. S., and X. Y., and others their fellows then and there assembled, ought to be hanged for depriving him the said A. B. of his bread, by refusing him the said A. B. a licence to sell ale, which he the said A. B. had then and there required from them the said P. Q. &c., and which they the said P. Q., R. S., X. Y., and others their fellows, justices as aforesaid, had then and there refused to grant to him the said A. B.,) to the great scandal and infamy of them the said P. Q., R. S., &c. &c. in disturbance of the administration of justice, in contempt of the government of our said Lord the King and his laws, and against the peace, &c.

* Scandalous aspersions of a magistrate in the execution of his office, are regarded as criminal, and subject the offender to punishment, at the discretion of the court in which he is convicted. Holt, Lib. 153. 1 Russel, C. & M. 328. And, to these, the rule is strictly confined. For if the language, however opprobrious, apply only to the justice in his private capacity, no indictment can be supported. So that if a man at a parish meeting call an *absent* magistrate abusive names, as if he say, "if he is a sworn justice, he is a rogue and a foresworn rogue," or if he apply to him the names of ass, fool, coxcomb, or blockhead, no indictable offence will have been committed. 2 Stra. 1157, 8. 2 Salk. 698. 2 Camp. 142. And it seems that to make *any* words thus indictable they must be spoken *to* the magistrate, and not in his absence. 2 Campb. 142. 2 Stra. 1157. 1 Stra. 420, 1.

County of..... } The jurors, &c. that A. B. late of, For digging up, and taking away a dead body from a church-yard.
 (to wit.) } &c. on, &c. with force and arms, &c. at, &c. aforesaid, the church-yard of and belonging to the parish church of the same parish there situate, unlawfully, voluntarily, and wilfully did break and enter, and the grave there, in which one M. B. deceased had lately before then been interred and then was, with force and arms unlawfully, voluntarily, wilfully, and indecently did dig open, and afterwards, to wit, on the same day and year aforesaid, with force and arms at the parish aforesaid, in the county aforesaid, the body of him the said M. B. out of the grave aforesaid, unlawfully, voluntarily, wilfully, and indecently did take and carry away,* to the great indecency of Christian burial, to the evil example of all others in the like case offending, and against the peace of our said Lord the King, his crown and dignity.

County of..... } That A. B. and C. D. being evil For preventing the interment of a dead body by an arrest.
 (to wit.) } minded persons, and having no regard for religion, or the laws and customs of this realm, on, &c. with force and arms at, &c. in, &c. a certain dead body, to wit, the body of M. B. then and there being in a certain street, called street, in the parish of aforesaid, in the city of aforesaid, unlawfully, and wickedly did arrest, † take, and carry away, and caused and procured to be arrested, taken, and carried away with an unlawful and wicked intention, to prevent the interment and burial of the said dead body of the said M. B., which ought

* This has always been holden a misdemeanour indictable at common law. 4 Black. Com. 235. 2 T. R. 733.—If the shroud, coffin, or any other chattel accompanying the dead body be taken away, *such* taking is a larceny, and indictable as such. See *ante*, p.

† A vulgar notion obtained very long, that it was lawful to arrest the body of a person deceased for a civil debt due from the party in his life time. Indeed it was not till of very late years that the notion was in any degree exploded. But it is now clearly ascertained, that no such practice is lawful, and indeed that to prevent the body from being interred, is an offence against decency, and as such indictable under the class of misdemeanours. 4 E. R. 465. 2 T. R. 734.

to have been done and performed according to the rites and ceremonies of the church of that part of this realm called England, to the great scandal and disgrace of religion, in contempt of the laws and customs of this realm, to the evil and pernicious example of all others in the like case offending, and against the peace of our said Lord the King, his crown and dignity.

For keeping a
common
bawdy house.

County of } The jurors, &c. that G. D. late of
(*to wit.*) } and on, &c. and at divers other
days and times between that day, and the day of taking
this inquisition, with force and arms at, &c. aforesaid, a
certain common bawdy house,* situate in a certain street,
called or known by the name of street, in the parish
of in the town of &c. unlawfully and wickedly
did keep and maintain; and in the said house, for filthy
lucre and gain, divers evil disposed persons, as well men as
women, and whores, on the days and times aforesaid, as

* Every bawdy house is necessarily a disorderly house, but every disorderly house is not necessarily a bawdy house, and though the proof of *one* may fail, the evidence may be sufficient to maintain a charge of the *other*. It is always, therefore, prudent in an indictment for keeping a bawdy house to add, by way of second count, the succeeding indictment for keeping a disorderly house.

It has been decided that a wife may be indicted either separately, or with her husband, for keeping a bawdy house, because the charge is the criminal *management* of the house, and the law presumes that to be *principally* in the woman's department. 1 Hawk. 2. 4 Black. Com. 29. 1 Salk. 382.—And even a *lodger* is indictable for this offence, the same as the proprietor of a *house*, if she convert her lodging to the same offensive purposes. 2 Ld. Raym. 1197. To prove a house being a *bawdy* house, requires evidence indeed more precise than will suffice for conviction of keeping a *disorderly* house, but it is not necessary to state *particulars* in the indictment; for particular instances of illicit intercourse may be given under the general charge; neither is it necessary to prove the particular persons who frequented the house and committed the offences, (which indeed may be impossible,) but it is necessary to give evidence sufficient of the facts themselves to lead to the conclusion that the purposes to which the house was applied were the offensive ones charged. 1 T. R. 754.

well in the night, as in the day, there unlawfully and wickedly did receive and entertain, and in which said house, the said evil disposed persons and whores, by the consent and procurement of the said G. D. on the days and times aforesaid, there did commit whoredom and fornication, whereby divers unlawful assemblies, riots, routs, affrays, disturbances, and violations of the peace of our said Lord the King, and dreadful filthy and lewd offences in the same house, on the days and times aforesaid, as well in the night, as in the day, were there committed and perpetrated, to the great damage and common nuisance of all the liege subjects of our said Lord the King, in manifest destruction and subversion of morality, and ruination of youth, and of other people in their manners, conversation, estate, and obedience, and against the peace, &c.

County of } That G. D. late of, &c. on, &c. and The like for
(to wit.) } on divers other days and times, between keeping a dis-
that day and the day of the taking of this inquisition, with orderly house.
force and arms at, &c. did keep and maintain, and yet doth
keep and maintain a certain common, ill-governed, and
disorderly house,* and in the said house, for his own lucre

* By 25 Geo. 2. c. 36. "If two inhabitants paying scot and lot shall give notice to a constable of any person keeping a disorderly house, the constable shall go with them before a justice, and shall (upon such inhabitants making oath of the truth of such notice, and entering into recognizance of 20*l.* each to give material evidence) enter into a recognizance of 30*l.* to prosecute with effect such persons at the next sessions. The constable shall be paid his reasonable expenses by the overseers of the poor, to be ascertained by the justice, and in case of conviction, the two inhabitants shall have 10*l.* each paid to them by the said overseer. The justice may bind over the party accused to the sessions, and to good behaviour in the mean time. Constable neglecting his duty to be fined 20*l.* § 5, 6, 7.

By § 8. of the same act, it is declared, that whoever shall act, or behave, as master or mistress, or as person having the care or management, or government, of such house, shall be deemed the keeper thereof.

Inhabitants may be witnesses. § 9.

Not to be removed by certiorari. § 10.

and gain, certain persons as well men, as women, of evil name and fame, and of dishonest conversation, to frequent and come together, then, and on the said other days and times, there unlawfully and wilfully did cause and procure, and the said men and women in the said house, at unlawful times, as well in the night, as in the day, then, and on the said other days and times there to be and remain drinking, tipling, swearing, gaming, rioting, and misbehaving themselves, unlawfully and willingly did permit, and still doth permit, to the great damage and common nuisance of all the liege subjects of our said Lord the King there residing, resorting and passing, to the evil example, &c. and also against the peace, &c.

For an assault
on a boy with
an intent to
commit sodomy.

County of } That N. B. late of, &c. not having the
(*to wit.*) } fear of God before his eyes, but being moved and seduced by the instigation of the devil, on, &c. with force and arms at, &c. aforesaid, in and upon one H. D. in the peace of God and our said Lord the King then and there being, did make an assault with an intent, that most horrid, detestable, and sodomitical crime, (among Christians not to be named) called buggery, with the said H. D. against the order of nature, then and there feloniously, wickedly, and devilishly to commit and do, to the great displeasure of Almighty God, to the great damage of the said H. D., and against the peace of our said Lord the King, his crown and dignity. [*A count for a common assault may be added, if the intent cannot be clearly shown.*]

For bathing
publicly near
public ways
and habitations.

County of } That H. O. G. yeoman, late of
(*to wit.*) } in the county of being a person of a wicked, depraved, and abandoned mind and disposition, and wholly lost to a due sense of decency and morality, and intending as much as in him lay to vitiate and corrupt the morals of his Majesty's liege subjects on, &c. with force and arms at, &c. aforesaid, unlawfully, wickedly, deliberately, and wilfully, did expose and exhibit himself

naked, and in an indecent posture and situation near to, and in front of, divers houses of the liege subjects of our said Lord the King, situate at, &c. aforesaid, and also near to a certain, public, and common, King's highway, there and also in the presence of divers liege subjects of our said Lord the King, both male and female, with intent to vitiate and corrupt the morals of his Majesty's liege subjects, to the great scandal and subversion of decency, religion, and good order, to the great corruption of the morals and manners of his Majesty's liege subjects, to the evil example, &c. and against the peace, &c. And the jurors aforesaid, upon *Second count.* their oath aforesaid, do further present, that the said H. O. G. being a person of such wicked, depraved, and abandoned mind and disposition, as aforesaid, and intending, as aforesaid, afterwards, to wit, on, &c. aforesaid, with force and arms, at, &c. aforesaid, unlawfully, wickedly, deliberately, and wilfully, did expose himself naked, to divers of his said Majesty's liege subjects, to the great scandal and subversion of religion and good order, to the great corruption of the morals and manners of his Majesty's liege subjects, to the evil example of, &c. and against the peace of, &c.

County of } That H. O. G. late of, &c. being a *For indecently*
(to wit.) } person of most wicked, lewd, lascivious, *exposing pri-*
 depraved, and abandoned mind and disposition, and wholly *vate parts to*
 lost to all sense of decency, morality, and religion, and in- *public view.*
 tending as much as in him lay, to vitiate and corrupt the
 morals of his Majesty's liege subjects, and to stir up and
 excite in their minds filthy, lewd, and unchaste desires and
 inclinations on, &c. with force and arms at, &c. unlawfully,
 wickedly, deliberately, and wilfully, did expose and exhibit
 his private parts, in a most indecent posture, situation, and
 practice, to divers of the liege subjects both male and
 female of our said Lord the King, with intent to vitiate and
 corrupt the morals of his Majesty's liege subjects, and to
 stir up and excite in their minds, filthy, lewd, and un-
 chaste desires and inclinations, to the great scandal and

subversion of religion and good order, to the great corruption of the morals and manners of his Majesty's liege subjects, to the evil example of, &c. and against the peace, &c.

Second count. And the jurors aforesaid, upon their oath aforesaid, do further present, that the said H. O. G. being a person of such wicked, depraved, and abandoned mind, and disposition as aforesaid, and intending as aforesaid, afterwards to wit, on, &c. aforesaid with force and arms, at, &c. aforesaid, unlawfully, wickedly, deliberately, and wilfully did expose and exhibit himself naked, to divers of his said Majesty's liege subjects, both male and female, &c. [*Conclusion as in first count.*]

For publishing
and selling an
obscene libel.

County of } That A. B. late of &c. being
(*to wit.*) } a person of a wicked and depraved
mind and disposition, and unlawfully, wickedly, and impiously designing, contriving, and intending to vitiate and corrupt the morals of all the subjects of our sovereign Lord the King; and to debauch, poison, and infect the minds of all the youth of this kingdom, and to bring them into a state of wickedness, lewdness, debauchery, and impiety, on, &c. with force and arms, at, &c. did unlawfully, wickedly, and impiously publish and sell, and cause and procure to be published and sold, a certain wicked, nasty, filthy, bawdy, impious, and obscene libel, entitled, "The History of Fanny Hill," in which said libel are contained amongst other things, divers wicked, false, feigned, lewd, impious, impure, gross, bawdy, and obscene matters, that is to say, in one part thereof, according to the tenor following, viz. [*here set out libel.*] And in another part thereof,* according to the tenor following, viz. [*here state the other libellous part*] to the high displeasure of Almighty God, to the scandal and reproach of the Christian religion, in contempt of our said Lord the King, and his laws, and to the great offence of all civil governments, to the evil and pernicious example of all others in the like case offending,

* 1 Campb. 352.

and against the peace of our said Lord the King, his crown and dignity. And the jurors aforesaid, upon their oath Second count. aforesaid, further present, that the said A. B. being such person as aforesaid, and most unlawfully, wickedly, and impiously devising, contriving and intending as aforesaid, and the sooner to accomplish, perfect, and bring to effect her said most unlawful and wicked purposes, afterwards, that is to say, on, &c. aforesaid, with force and arms, at, &c. aforesaid, did unlawfully, wickedly, and impiously publish and sell, and cause and procure to be published and sold, a certain other wicked, nasty, filthy, bawdy, impious, and obscene libel, entitled, "The History of Fanny Hill," in which said last-mentioned libel are contained amongst other things divers wicked, false, feigned, lewd, impious, impure, unnatural, bawdy, and obscene prints, representing and exhibiting men and women with their private parts, in most indecent postures and attitudes, and representing and exhibiting men and women in the act of carnal copulation, in various attitudes and postures. [*Conclusion as in first count.*] And the jurors afore- Third count. said, upon their oath aforesaid, further present, that the said A. B. being such person as aforesaid, and most unlawfully, wickedly, and impiously contriving, and intending as aforesaid, afterwards to wit, on, &c. with force and arms, at, &c. aforesaid, a certain other wicked, nasty, filthy, bawdy, impious, and obscene libel, did unlawfully, wickedly, and impiously sell and cause and procure to be sold, in which last-mentioned libel are contained amongst other things, divers wicked, false, feigned, lewd, impious, impure, gross, bawdy, and obscene matters, in substance and to the effect following, that is to say, [*here set out the libel.*] To the great displeasure of Almighty God, &c.

County of } That H. T. late of, &c. being a For exposing
 (to wit.) } person of a most wicked, lewd, lascivi- to sale an ob-
 ous, depraved, and abandoned mind, and disposition, and scene print.
 wholly lost to all sense of decency, chastity, morality,

and religion; and being minded and intending as much as in him lay to corrupt the morals of his Majesty's liege subjects, and to stir up and excite in their minds filthy, lewd, and unchaste desires, and inclinations, on, &c. and on divers other days and times between that day and the day of taking this inquisition, with force and arms, at, &c. aforesaid, unlawfully, wickedly, deliberately, and advisedly did publish, expose, and shew to the sight and view of many of the liege subjects of our said Lord the King, divers, to wit, six obscene, filthy, and indecent prints, representing men and women in attitudes, situations, and practices of great and scandalous obscenity, lewdness, and indecency, to the great scandal and subversion of religion and good order, to the great corruption of the morals and manners of his Majesty's liege subjects, to the evil example, &c. and against the peace, &c. And the jurors, aforesaid, upon their oath aforesaid, do further present, that the said [*defendant*] being a person of such wicked, depraved, and abandoned mind, and disposition as aforesaid, and intending as aforesaid, afterwards, to wit, on, &c. [*another day,*] with force and arms, at, &c. aforesaid, unlawfully, wickedly, deliberately, and advisedly did utter and publish divers, to wit, six other obscene, filthy, and indecent prints, representing men and women in attitudes, situations, and practices of great and scandalous obscenity, lewdness, and indecency, to the great scandal and subversion of religion and good order, to the great corruption, &c. to the evil example, &c. and against the peace, &c.

Second count.

LARCENY.*

For larceny in stealing a small quantity of hay of the value of ten-pence. } County of } The jurors, &c. that A. B. late of (to wit.) } in the county of labourer, on the day of, &c. with force and

* So much has been advanced in an anterior page (130), on the subject of larceny generally, and larcenies of the more aggravated kinds (as well where such aggravation arises from value, as from specific cha-

arms, at in the county of &c. a small quantity of hay * of the value of ten-pence, of the goods and chattels of one C. D.† then and there being found, feloniously did steal, take, and carry away, against the peace of our said Lord the King, his crown and dignity.

County of } The jurors, &c. that O. B. late of,
 (to wit.) } &c. on, &c. with force and arms, at,
 &c. aforesaid, unlawfully did enter a certain inclosed field,
 there situate, belonging to one M. M. and then and there unlawfully and injuriously did milk a certain cow, of and belonging to the said M. M. being in the said inclosed field of her the said M. M. and that he the said O. B. by such milking, did then and there draw and extract four quarts of milk of the value of eight-pence, from and out of

For milking a cow and stealing the milk.

acter) being, for the reasons before assigned, excluded from our consideration here; the introduction of precedents is only necessary so far as they bear relation to such larcenies, as, either by common law, or statute, may be subjects of cognizance by courts of quarter session of the peace.

And as some species of offences made larcenies by statute, though at common law, and according to common understanding, rather comprehended under other classifications of offences, (*ex gr.* the 6 Geo. 3. c. 36. & 48. for the preservation of trees, shrubs, plants, and roots; the 5 Geo. 3. c. 14, for destroying fish out of private waters; and many others,) were not included among the observations previously advanced on the subject of larceny generally; so, among these precedents, in order to avoid a multiplication of heads and titles, several subjects of larceny (declared so to be by statute) are introduced, that were omitted in the anterior pages above referred to.

* The *kind* of property stolen must be accurately described, as a man indicted for stealing sheep, could not be convicted, if they turned out to be lambs. If the article stolen consist of number, so that the number can be set forth, it ought so to be, but it may be sufficient to state a *great number* generally, and introduce the particular number under a *scilicet*, in which case it is not necessary to prove in evidence the precise number laid. And when (as in the precedent before us, and for stealing corn and other such things, not kept in bags or other specific measures,) it is sufficient to lay the charge as here, "*a small quantity*."

† When the actual owner is known, his name must be inserted; if not known, it must be so inserted.

the said cow; and the said four quarts of milk, so drawn and extracted as aforesaid, of the goods and chattels of the said M. M. he the said O. B. then and there unlawfully and feloniously did steal, take, and carry away, to the great damage of the said M. M. and against the peace, &c.

For stealing goods, the owners of some being known, and of others not known.

County of } The jurors, &c. that A. B. late of
(*to wit.*) } in the county of la-
bourer, on the day of in the year
of our Sovereign Lord George the Third, King, &c. with
force and arms, at the parish aforesaid, in the county afore-
said, one pair of snuffers, of the value of five-pence of law-
ful money of Great Britain, of the goods and chattels of
one M. N. and two plated tea-spoons of the value of six-
pence, of the goods and chattels of some person or persons
to the jurors aforesaid unknown,* then and there being
found, unlawfully and feloniously did steal, take, and carry
away, against the peace of our said Lord the King, &c.

For a single felony in stealing lead affixed to a dwelling-house, on 4 Geo. 2. c. 32.

County of } That A. B. late of London, labourer,
(*to wit.*) } after the twenty-fourth day of June, in
the year of our Lord one thousand seven hundred and
thirty-one, † to wit, on, &c. with force and arms, at, &c.
sixty pounds weight of lead, of the value of four shillings,
belonging to C. D. then and there fixed to the dwelling-
house of the said C. D. feloniously did rip, steal, take,
and carry away, against the form of the statute, &c. and
against the peace, &c.

For stealing lead fixed to a church, on 4 Geo. 2. c. 32.

County of } That A. B. late of, &c. on, &c. with
(*to wit.*) } force and arms, at, &c. aforesaid,
. pounds weight of lead, of the value of be-
longing to the Rev. C. D. clerk, rector of the parish afore-

* If the owner be known, this allegation is not only improper, but on the discovery of the contrary on the trial, the prisoner is entitled to acquittal. 3 Campb. 264.

† The date of the statute taking effect.

said, in the county aforesaid, and then and there being fixed to the parish church of aforesaid, in the county aforesaid, then and there feloniously did steal, take, and carry away, against the form of the statute, &c. and against the peace, &c. And the jurors aforesaid, upon their oath aforesaid, do further present, that the said A. B. on the said day of in the year aforesaid, with force and arms, and at the parish aforesaid, in the county aforesaid, pounds weight of lead, of the value of belonging to E. F. and G. H. churchwardens of the parish aforesaid, in the county aforesaid, and then and there being fixed to the parish church of aforesaid, in the county aforesaid, then and there feloniously did steal, take, and carry away, against the form of the statute, &c. and against the peace, &c. [Commencement as in second count.] pounds weight of lead, of the value of belonging to the inhabitants and parishioners of the parish of aforesaid, in the county aforesaid, and then and there being fixed to the parish church of aforesaid, in the county aforesaid, then and there feloniously, &c. [as in the second count to the end.] pounds weight of lead, of the value of then and there being fixed to the parish church of aforesaid, in the county aforesaid, then and there feloniously, &c. [as in second count to the end.] *

First count, laying the property in the lead in the rector.
Second count, laying the property in the church-wardens of the parish.
Third count, laying the property in the inhabitants and parishioners.
Fourth count, generally for stealing lead from off a church, contrary to statute.

County of } That on, &c. W. T. of, &c. keeper, For a single
(to wit.) } came before George, lord V. and A. B. felony, on
16 Geo. 3. c. 30.
in killing a deer in the forest of Needwood, after being respectively convicted once before on similar offences.†

* It must be an extraordinary case of uncertainty wherein all these counts can be necessary; even the last being generally held sufficient. See *ante*, p. 173. Many prosecutions for this species of larceny have been frustrated, in the cases of cathedral and collegiate churches, when in the indictments the property has been ill-laid, and the last count here introduced has been omitted. 3 Campb. 264. See *ante*, p. 145.

† The 43 Geo. 3. c. 107. makes the hunting or destroying of deer without the consent of the owner, felony, punishable with transportation for seven years; it is necessary therefore, to call the owner of the deer, to prove that he did not consent. 2 Campb. 654.—3 Chit. C. L. 971.

esquire, two of the justices of our said Lord the King, assigned to keep the peace of our said Lord the King in the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors committed within the said county, and gave the said justices to understand and be informed, that B. B. late of, &c. labourer, on, &c. in the forest or chase of Needwood, then of our said Lord the King, in the county aforesaid, and wherein deer then were, and long before had been usually kept, did kill a certain fallow deer without the consent of our said Lord the King, then being the owner of the said forest or chase, and of the deer within the same, or of any other person then chiefly entrusted with the custody of the said forest or chase, or of the deer within the same, against the form of the statute, &c.; and also that J. A. late of, &c. miller, on the said, &c. in the forest and chase aforesaid, did wilfully, knowingly, and unlawfully, aid and assist him the said B. B. in so unlawfully killing the said fallow deer, against the form of the statute aforesaid, and thereupon afterwards, to wit, on the said, &c. at, &c. aforesaid, they the said B. B. and J. A. then appeared and being present before the said justices, were severally asked by them the said justices, if they could say any thing in their defences severally and respectively, why they or either of them should not be convicted of the premises severally charged upon them in form aforesaid, and had nothing to say in their defences, severally and respectively, and that the same premises being also then fully and duly proved upon the oath of J. B. of, &c. labourer, a credible witness, it manifestly appeared to them the said justices, that they the said B. B. and J. A. were severally guilty of the said offences severally charged upon them in manner aforesaid, and that it was therefore then and there considered and adjudged by them the said justices, that the said B. B. and J. A. should be severally convicted, and that they were severally convicted thereof, according to the form of the statute, &c. and that for the offences aforesaid, each of them the said B. B. and J. A. according to the form of the statute aforesaid, had severally forfeited the sum of thirty pounds of

lawful money of Great Britain, to be distributed as the statute aforesaid did direct, [*here followed the conviction of J. S. like that of B. B.*] And the jurors, &c. do further present, that the said J. A. and J. S. being ill-designing and disorderly persons not regarding the laws and statutes of this realm, nor fearing the pains and penalties therein contained, after having been severally so convicted as aforesaid, afterwards and after the tenth day of June, which was in the year of our Lord one thousand seven hundred and seventy-six, to wit, on, &c. with force and arms, at the ward of Tutbury, otherwise Tutbury-ward, (being an extra parochial place)* in the forest of Needwood, in the said county of S., the said forest then and long before and still being the forest of our said Lord the King, there called and known by the name of Needwood forest, and being a forest where deer on the said, &c. were and for the space of forty years and more, then last past, have been usually kept, and still are usually kept, one male fallow-deer of our said Lord the King, of the price of twenty shillings, there then found without the consent of our said Lord the King, then being the owner of the said forest, and of the said last-mentioned deer, or of any other person then chiefly entrusted with the custody of the said last-mentioned deer, and of the said forest, and without being in anywise duly authorised in that behalf, then and there unlawfully, and feloniously did kill, to the great damage of our said Lord the King, to the evil example, &c. against the form of the statute, &c. and against the peace, &c. And the jurors aforesaid, upon their oath aforesaid, do further present, that the said J. A. and J. S. after having been severally so convicted as aforesaid, afterwards, to wit, on the said, &c. with force and arms, at said ward of Tutbury, otherwise Tutbury ward, in the said county of S., in the said forest of our said Lord the King, called Needwood forest, then and long before, and still being the forest of our said Lord the King, there called and known by the name of Needwood forest, and being a forest where deer then

Conviction of
J. S.

Second count,
for taking in a
forest.

* These words were omitted in the 2d and 4th counts.

were, and long before, and ever since have been usually kept, one other male fallow-deer, of our said Lord the King, of the price of twenty shillings, there then found, without the consent of our said Lord the King, then being the owner of the said forest, and of the said last-mentioned deer, or of any other person then chiefly entrusted with the custody of the said last-mentioned deer, and of the said forest, and without being in anywise duly authorised in that behalf, then and there unlawfully and feloniously did take and carry away, to the great damage, &c. [*as in first count.*] Third count "for killing in a chase." Fourth count "for taking in a chase."

For a misdemeanor in stealing fish out of a park or paddock, on 5 Geo. 3. c. 14. § 1.

County of } That A. B. late of, &c. within six
(to wit.) } calendar months next before the day of the taking of this inquisition, to wit, on, &c. with force and arms, at, &c. unlawfully did enter into a certain park, then and there fenced in and enclosed, called D. Park, of and belonging to one E. F. esquire, and in which said park there then was a certain pond of water, and then and there, to wit, on, &c. at, &c. feloniously * did steal, take, kill, and carry away certain fish, to wit, thirty fish called carp, thirty fish called tench, and thirty fish called perch, of the value of forty shillings, then and there bred, kept, and preserved in such pond of water, without the consent of the said E. F. the owner of the said pond and fish, against the form, &c. and against the peace, &c. And the jurors, &c. do further present, that the said A. B. afterwards and within six calendar months next before the day of the taking of this inquisition, to wit, on the said, &c. with force and arms, at, &c. aforesaid, unlawfully did enter into the said park called D. park, so fenced in and inclosed, of and belonging to the said E. F. as aforesaid, and in which said park there then was a certain pond

First count, for stealing, taking, and killing fish bred, kept, and preserved, in a pond situate in a park.

Second count, for destroying fish preserved in a pond situate in a park.

* In the indictment there is no occasion to aver the fish to be the goods or chattels of any one, but if those words are inserted, they may be rejected as surplusage. East P. C. 611. Starkie, 182.

of water, and then and there, to wit, on the same day and year last aforesaid, at, &c. aforesaid, feloniously did destroy certain fish, to wit, &c. [*as before,*] then and there preserved in the said last-mentioned pond of water, without the consent of the said E. F. the owner of the said last-mentioned pond and fish, against the form, &c. and against the peace, &c. *Third count like the first, using the word "paddock" instead of "park." Fourth count like the second, with the same variation.*

County of } That A. B. late of, &c. and C. D. For misde-
 (to wit.) } late of, &c. on, &c. with force and meanor, on
 arms, in the county aforesaid, by means of a certain net, 31 Geo. 3. c. 51.
 did unlawfully, knowingly, and wilfully take and catch for taking
 from a certain oyster fishery, within the limits and pre- oysters, &c.
 cincts of the port of King's Lynn, in the said county of from a fishery.*
 N. of and belonging to the mayor and burgesses of the
 borough of Lenne Regis, commonly called King's Lynn,
 in the county of N. one gallon of oysters of the value of
 one shilling, of the goods and chattels of the said mayor
 and burgesses, the same fishery being an oyster fishery of
 this kingdom, and the said A. B. and C. D., &c. not be-
 ing the owners, lessees, or occupiers of such fishery, or
 otherwise lawfully intitled to take or catch oysters therein,
 against the peace, &c. and against the form of the statute,
 &c. And the jurors, &c. that the said A. B. and C. D. *Second count.*
 on the said, &c. did unlawfully, knowingly, and wilfully
 use a certain net within the limits of a certain oyster
 fishery, within the limits and precincts of the port of
 King's Lynn, in the said county of N. of and belonging
 to the mayor and burgesses of the borough of Lenne
 Regis, commonly called King's Lynn, in the county of
 N. for the purpose of taking and catching oysters, the
 same fishery being an oyster fishery of this kingdom, and
 the said A. B. and C. D. not being the owners, lessees,
 or occupiers of such fishery, or otherwise lawfully intitled
 to take or catch oysters therein, against the peace, &c. and

* 3 Chit. C. L. 973.

- Third count.** against the form of the statute, &c. And the jurors, &c. do further present, that the said A. B. and C. D. on, &c. with force and arms, in the county aforesaid, by means of a certain dredge, did unlawfully, knowingly, and wilfully take and catch from a certain oyster fishery within the limits and precincts of the port of King's Lynn, in the said county of N. of and belonging to the mayor and burgesses of the borough of Lenne Regis, commonly called King's Lynn, in the county of N. one gallon of oysters of the value of one shilling, of the goods and chattels of the said mayor and burgesses, the same fishery being an oyster fishery of this kingdom; and the said A. B. and C. D. not being the owners, lessees, or occupiers of such fishery, or otherwise lawfully entitled to take or catch oysters therein, against the peace, &c. and against the form of the statute, &c.
- Fourth count.** And the jurors, &c. do further present, that the said A. B. and C. D. on the said, &c. with force and arms, in the county aforesaid, did unlawfully, knowingly, and wilfully use a certain dredge within the limits of a certain oyster fishery within the limits and precincts of the port of King's Lynn, in the said county of N. of and belonging to the mayor and burgesses of the borough of Lenne Regis, commonly called King's Lynn, in the county of N. for the purpose of taking and catching oysters, the same fishery being any oyster fishery of this kingdom; and the said A. B. and C. D. not being the owners, lessees, or occupiers of such fishery, or otherwise lawfully intitled to take and catch oysters therein, against the peace, &c. and against the form of the statute, &c.

For a single
felony, on 48
Geo. 3. c. 144.
for stealing
oysters.

County of } That A. B. late of, &c. on, &c. with
(to wit.) } force and arms, did knowingly, wil-
fully, and feloniously steal, take, and carry away from a
certain oyster bed within the limits and precincts of the port
of King's Lynn, in the said county of N., the property of
the mayor and burgesses of the borough of Lenne Regis,
commonly called King's Lynn, in the county of Norfolk,
and sufficiently marked out as such, one gallon of oysters
of the value of one shilling, of the goods, chattels, and

property of the said mayor and burgesses, against the peace, &c. and against the form of the statute, &c. And the *Second count.* jurors, &c. do further present, that the said A. B. on the said, &c. with force and arms did knowingly, wilfully, and feloniously steal, take, and carry away from a certain oyster laying, within the limits and precincts of the port of King's Lynn, in the said county of N., the property of the mayor and burgesses of the borough of Lenne Regis, commonly called King's Lynn, in the county of S., and sufficiently marked out as such, one gallon of oysters of the value of one shilling, of the goods, chattels, and property of the said mayor and burgesses, against the peace, &c. and against the form of the statute, &c. And the jurors, &c. do further *Third count.* present, that the said A. B. on the said, &c. with force and arms, did knowingly, wilfully, and feloniously steal, take, and carry away from a certain oyster fishery within the limits and precincts of the port of King's Lynn in the said county of N., the property of the mayor and burgesses of the borough of Lenne Regis, commonly called King's Lynn, in the county of N., and sufficiently marked out as such, one gallon of oysters of the value of one shilling, of the goods, chattels, and property of the said mayor and burgesses, against the peace, &c. and against the form, &c.

County of } The jurors, &c. that A. B. late of, For a misdemeanour in stealing conies from an occupier of ground, used for the breeding and keeping thereof, in the night time, on 5 Geo. 3. c. 14. s. 6.*
(to wit.) } &c. on, &c. with force and arms, at, &c. wilfully and wrongfully in the night time of the said day, that is to say, about the hour of eleven in the night of the said day, did enter into a certain warren called W. C. there situate, and then and there lawfully used for the breeding and keeping of conies, and then in the occupation of J. B., and did then and there, wilfully and wrongfully take in the night-time of the said day, that is to say, about the hour of eleven in the night of the said day, twenty conies of the price of eight shillings, against the will of the said J. B. then and there being the occupier of the said warren called W. C. so as aforesaid, then and there lawfully used for the breeding and keeping of conies, to the great damage,

&c. against the form, &c. and against the peace, &c.
Second count same as the first, only using the word "kill" instead of "take."

For felony in stealing linen from a bleaching croft, on 18 Geo. 2. c. 27. & 51 Geo. 3. c. 41.

County of } That A. B. late of, &c. on, &c. with
 (to wit.) } force and arms, at, &c. aforesaid, thirty yards of linen cloth of the value of thirty shillings of the goods and chattels of C. D. of the parish aforesaid, in the county aforesaid, whitster, then and there being laid, placed, and exposed to be bleached and whitened in a certain bleaching croft of the said C. D. situate, lying, and being in the parish aforesaid, in the county aforesaid, then and there made use of by the said C. D. for the bleaching and whitening of the same linen cloth, then and there being found, then and there in the same bleaching croft, feloniously did steal, take, and carry away, against the peace, &c. and against the statutes, &c.

For stealing shrubs in the night time from a garden, on 6 Geo. 3. c. 35.

County of } That A. B. late of, &c. on, &c. at, &c. in the night time, to wit, about the hour of twelve in the night of the same day, with force and arms shrubs called of the value of five shillings, and plants called of the value of five shillings, then and there growing in a certain garden ground of E. F., there situate and then and there being the property of the said E. F., did feloniously pluck up and steal, take and carry away, against the form, &c. and against the peace, &c.

For a single felony, on 48 Geo. 3. c. 129. for stealing from the person.

County of } That A. B. late of, &c. on, &c. with
 (to wit.) } force and arms, at, &c. aforesaid, one silver watch with a silver chain, of the value of four pounds, of the goods and chattels of one C. D. from the person of the said C. D. then and there feloniously did steal, take, and carry away, against the form,* &c. and against the peace, &c.

* By the 8 Eliz. c. 4. Larceny from the person of any one *privily*

LIBELS.*

ounty of } The jurors for our Lord the King
(to wit.) } upon their oath present, that C. D.
 late of, &c. being a person of an evil, wicked and malicious
 mind and disposition, and unlawfully, wickedly and mali-
 ciously devising, contriving and intending, as much as in
 him lay, to scandalize, vilify and defame one A. B. and to

Common form
 of indictment
 for a libel on
 a private indi-
 vidual.

and without his knowledge, was rendered a felony, *sans* clergy. The
 48 Geo. 3. c. 129. repeals that provision of the Act of Eliz.: and enacts
 that stealing from the person of another, *whether privily without his
 knowledge, or not*, but *without such force or putting in fear*, is to con-
 stitute the crime of robbery, with all present aiding and abetting, shall
 be subject to transportation for life, or any term not less than seven years,
 or to imprisonment and hard labour for not more than three years.
 Since the passing of this last-mentioned statute, it has been usual to
 prosecute for this offence at the Sessions of the Peace.

* From what has been advanced under another title (*Indecency*), it
 must have been anticipated that libellous attacks, whether by writing, or
 by words, on private individuals are alone designed to be introduced
 under this *head*; those against the government and its functionaries, as
 well superior, as inferior, having been considered under the division of
Indecency, political, as well as moral.

Private libels, or libels on individuals, have been defined to be "ma-
 licious defamations, expressed either in *printing or writing*, or by *de-
 signs or pictures*, tending either to blacken the memory of one who is
 dead, or the reputation of one who is alive, and thereby exposing him
 to public hatred or contempt. 1 Hawk. 73.—2 Wils. 121.—2 Campb.
 511. Such is the legal and strictly technical definition of libel, but it
 is colloquially, and to a certain degree, *technically*, also, extended to
 slander of any kind. See *ante*, p. 124.

When the slander immediately affects an individual, he may either
 prefer a bill of indictment in the usual course, or move for leave to file
 a criminal information in the crown-office: but the court will exert a
 discretionary power in deciding whether they will thus sanction a pro-
 secution, and will frequently deny it where an indictment might well
 be supported.

Before the prosecutor can be admitted to read the paper charged as
 libellous, he must give *prima facie* evidence of a publication by the
 defendant. This may be either positive in itself, or be inferred from
 facts which are not conclusive. 5 Bur. R. 2689.—4 T. R. 126.—4 Esp.
 R. 248.

bring him into public scandal, infamy and disgrace, and to injure, prejudice and aggrieve him the said A. B., on, &c. with force and arms, at, &c. aforesaid, of his great hatred, malice and ill-will towards the said A. B. unlawfully and maliciously did compose and publish, and cause and procure to be composed and published, a certain false, scandalous, malicious and defamatory libel of and concerning the said A. B., containing therein, amongst other things, the false, scandalous, malicious, defamatory and libellous words and matter following of and concerning the said A. B., that is to say, [*here state the libellous matter with the necessary innuendoes,*] which said false, scandalous, malicious and defamatory libel, he the said C. D. afterwards, to wit, on, &c. aforesaid, at, &c. aforesaid, unlawfully, wickedly, and maliciously did send, and cause to be sent, to one E. F. in the form of a letter addressed to the said E. F., and did thereby then and there, unlawfully, wickedly and maliciously publish, and cause to be published, the said libel, to the great damage, scandal, infamy and disgrace of the said A. B., in contempt, &c. to the evil and pernicious example, &c. and against the peace of our said Lord the King, his crown and dignity.

For writing
and sending a
letter to the
prosecutor ac-
cusing him of
theft.

County of } That O. O. late of, &c. being a person
(*to wit.*) } of an envious, evil and wicked mind,
and of a most malicious disposition, and wickedly, maliciously and unlawfully, minding, contriving and intending, as much as in him lay, to injure, oppress, and aggrieve, and vilify the good name, fame, credit and reputation of one H. B., a good, peaceable and worthy subject of our said Lord the King, and to bring him into great contempt, hatred, infamy and disgrace; on, &c. with force and arms, at, &c. aforesaid, a certain false, scandalous and libellous writing against the said H. B. falsely, maliciously and scandalously, did frame and make, and in the name of him the said O. O. then and there, did cause to be written and published in the form of a letter, directed to him the said

H. B., which said writing is as follows, to wit, to H. B. This comes to remind you, (meaning him the said H. B.) that the time draws near, for you (meaning the said H. B.) to be preparing yourself (again meaning the said H. B.) for a trial, for stealing the corn out of my (meaning his, the said O. O.'s) barn, when I (meaning the said O. O.) hope to see you (meaning the said H. B.) swing by the neck as you deserve, you thief, (meaning the said H. B.) subscribed O. O., (meaning himself the said O. O.); and that he the said O. O. with intention to scandalize the said H. B., and to bring him into contempt, hatred, infamy and disgrace, the said false, malicious, scandalous and libellous writing, so as aforesaid framed, written and made, afterwards, to wit, on the said, &c. and on divers other days and times, as well before as afterwards, at, &c. aforesaid, to one P. Q. and to one X. Y., and to divers liege subjects of our said Lord the King then and there present, falsely, maliciously and scandalously, did openly shew, deliver and cause to be delivered, to the great scandal, infamy and damage of the said H. B., to the evil example, &c. and against the peace, &c.

County of } The jurors, &c. that on and before, The publishing
(to wit.) } and ever since the day of the taking of a libel against
 this inquisition, A. B. was, and yet is, a graduate physician a physician
 and qualified surgeon, and by his knowledge, skill, practice, who had been
 and experience in physic and surgery, hath, within the time indicted for an
 aforesaid, performed and wrought divers successful cures of assault with
 several distempers, disorders, wounds, ruptures, sores, ulcers, hurts, bruises, and fractures, among the liege subjects intent to ravish
 of our said Lord the King; and hath thereby not only charging him
 gained reputation, fame, and credit, but also by means with the said
 whereof hath obtained and acquired a comfortable maintenance and support, and great profit and subsistence. And crime, and
 that at the general quarter session of the peace of our said ignorance in
 Lord the King, holden by adjournment at H. H., in St. I. S., his profession.
 in and for the county of M., on the day of in.

the year aforesaid, by the oath of twelve good and lawful men of the said county of M., then and there sworn and charged to inquire for our said Lord the King, for the body of the same county, it was presented that A. B., late of, &c. (*here go on with indictment for assault with intent to ravish, then say,*) which said indictment our said Lord the King afterwards, for certain reasons, caused to be brought before him, to be determined according to the law and custom of England, and that afterwards, that is to say, on Friday next after the morrow of the Holy Trinity, in Trinity Term, in the year aforesaid, before our Lord the King, at Westminster, came the said A. B., by R. B. his attorney, and having heard the said indictment read, said that he did not think that our said Lord the King would, or ought to molest him the said A. B. by reason of the premises aforesaid, because he said that the said indictment, and the matter therein contained, were not sufficient in law, and that he need not, nor was bound by the law of the land, in any manner to answer thereto, wherefore, for the insufficiency thereof, he prayed judgment, and that he might be dismissed and discharged by the Court thereof, and from the premises aforesaid; whereupon all and singular the premises having been seen and fully understood by the Court of our said Lord the King, then there, for that no one came on the behalf of our said Lord the King further to inform the Court there in the premises, or to join in demurrer in law with the said A. B.; it was considered and adjudged by the said Court, thereof and from the premises above specified in the said indictment, and that he depart thence without delay, as by the record and proceedings on the said indictment may more fully and at large appear. And the jurors aforesaid, now here sworn and charged to inquire for our said Lord the King, for the body of the said county of M., upon their oath, &c. that in of, &c. well knowing the premises, and being a person of a wicked and turbulent mind and malicious temper and disposition, and greatly envying the happy state, condition, and situation of life of the said A. B., and wickedly, maliciously, and falsely devising, contriving,

and intending to scandalise and vilify the said A. B., and to insinuate and make it be believed as if the said A. B. was a quack and impostor, and a person of no abilities, skill, knowledge, judgment, or experience in the practice of physic and surgery, and of low, mean, and indigent circumstances, and thereby to ruin the said A. B. in his reputation, character, and credit as a physician and surgeon, and to bring him into great disgrace and contempt among the liege subjects of our said Lord the King, on the day of in the year aforesaid, with force and arms, at the parish aforesaid, in the county aforesaid, a certain false, feigned, wicked, malicious, and scandalous and infamous libel of and concerning the said A. B., entitled "The Cook turned Doctor: a New Song; tune—Hey ho Dobin," unlawfully, wickedly, maliciously, and scandalously did utter and publish, and cause and procure to be uttered and published, the tenor of which said false, feigned, wicked, malicious, scandalous, and infamous libel, is as follows; that is to say, (*here insert it exactly, with the necessary immu- endoes,*) to the great infamy, scandal, disgrace, and reproach of the said A. B.; in contempt, &c. to the great damage, aggrievance, and disquiet of the said A. B.; to the evil, &c. and against the peace, &c. [*Here add another count as before, only leaving out the indictment and proceedings thereon.*]

County of } The jurors, &c. that on, &c. J. B., Esq.
 (to wit.) } then, and long before that time, was, and
 ever since hath been, and yet is, a coroner of our said pre-
 sent Sovereign Lord the King, of the city of L., and that
 on the said day of in the year aforesaid, M. C.,
 an apprentice to one P. Q., died at L., to wit, at the parish
 of, &c. in the city of L. aforesaid, that is to say, at St. B.'s
 Hospital, there situate, and within the jurisdiction of the
 said J. B., then coroner as aforesaid, and that it having been
 suspected that the said M. C. came to a violent death, he
 the said J. B. afterwards, to wit, on the day of
 in the year of, &c. at L. aforesaid, to wit, at the parish

For publishing
 a libel on the
 coroner of L.,
 relative to an
 inquisition ta-
 ken by him on
 the body of a
 person murder-
 ed.

of, &c. in the city of L. aforesaid, then being coroner of our said present Sovereign Lord the King, of the said city of L., in due form of law, and according to the duty of his office of coroner, did take an inquisition on view of the body of the said M. C., and that upon the said inquisition, the jurors sworn and charged to inquire for our said present Sovereign Lord the King, when, how, and in what manner the said M. C. came to his death, who say upon their oath, that (*here go on with the inquisition,*) as by the said inquisition, taken before the said J. B., coroner as aforesaid, may more fully and at large appear. And that on the said day of in the said year of, &c. at L. aforesaid, to wit, at the parish of, &c. in the city of L. aforesaid, a certain false, wicked, malicious, and scandalous libel of and concerning the said J. B., then coroner as aforesaid, was unlawfully, wickedly, and maliciously inserted, printed, and published in a newspaper, entitled "No. 6207. The London Evening Post, from Thursday, August, &c., to, &c.;" the tenor of which said false, wicked, malicious, and scandalous libel is as follows; that is to say, the letter signed "Justice," censuring very much and severely the coroner of the city of L., thereby meaning the said J. B., to wit, at the time of the printing and publishing the said false, malicious, and scandalous libel, and long before, being coroner of our said present Sovereign, &c. of the said city of L., for his conduct relative to the poor apprentice girl, meaning the said M. C., that died through the barbarous treatment of her mistress, meaning P. Q., is not safe for us to insert; by means of which said false, wicked, and malicious libel the said J. B. was greatly aspersed, vilified, scandalized, and stigmatized in his character, and was brought into extreme scandal, infamy, and disgrace, and censured severely touching his conduct relative to his taking the said inquisition on the said M. C.; and that H. S. W., of L., printer, falsely and maliciously devising and intending to asperse, stigmatize, and vilify the character of the said J. B., in the execution of his office of coroner, in the taking such inquisition as aforesaid, and by

means thereof (as much as in him the said H. S. W. lay) to bring the said J. B. into extreme scandal, infamy, disgrace, hatred, and contempt, with all the liege subjects of our said present Lord the King, afterwards, to wit, on, &c. with force and arms, at L. aforesaid, to wit, at the parish of, &c. in the city of L. aforesaid, a certain false, wicked, malicious, and scandalous libel of and concerning the said J. B., being coroner as aforesaid, in a certain newspaper entitled, &c. by way of letter, did most unlawfully, wickedly, and maliciously print and publish, and did cause and procure to be printed and published; which said last mentioned false wicked, and scandalous libel, by way of letter, of and concerning the said J. B., coroner as aforesaid, is according to the tenor following; that is to say, "To the printer of, &c. Sir, I am, &c. &c." And the jurors, &c. that the said J. B., being greatly aggrieved, injured, and unjustly censured and oppressed, on account of the false, feigned, malicious, and scandalous libel, so printed and published as aforesaid, in the said newspaper above mentioned, in order to prevent and put a stop to any future libels being published in the newspapers against him the said J. B., touching the said inquisition, and to notify to the public his intention to bring to justice the author, printers, and publishers, of the said two most malicious and scandalous libels, afterwards, to wit, on, &c. did cause and procure an advertisement, in and under the name of him the said J. B., to be inserted and published in a certain newspaper entitled, &c. the tenor of which said advertisement is as follows; to wit, &c. &c. And the jurors, &c. that the said H. S. W., in further prosecution of his most wicked intents and purposes, and in order further maliciously and wickedly to stigmatize, vilify, and scandalize the said J. B., afterwards, to wit, on, &c. with force and arms, at L., to wit, at the parish of, &c. in the city of L. aforesaid, a certain other false, wicked, malicious, and scandalous libel of and concerning the said J. B., so being coroner as aforesaid, in a certain other newspaper, entitled "The Public Advertiser, No. 10242. Monday, August 31, 1767;" by way of letter, did most unlawfully, wickedly, and maliciously print

Third count.

and publish, and did cause and procure to be printed and published; which said last mentioned false, wicked, malicious, and scandalous libel, by way of letter, of and concerning the said J. B., coroner as aforesaid, is according to the tenor following; that is to say, &c. &c.; thereby most wickedly and scandalously insinuating and endeavouring to make it be believed as if the said J. B., in the execution of the important office of coroner, had not acted consistent with justice; to the great infamy, reproach, scandal, disgrace, and dishonour of the said J. B.; in contempt, &c.; to the great damage, aggrievance, and disquiet of the said J. B.; to the evil, &c. against the peace, of, &c. [*Second count the same, only not setting forth the inquisition; third count as follows:*] And the jurors, &c. that on, &c. the said J. B. then being coroner of our said present Sovereign Lord the King, of the city of L., in due form of law, and according to the duty of his office as coroner of the said city of L., at L., to wit, at the parish of, &c. in the city of L. aforesaid, did take a certain inquisition, on view of the body of M. C., then late apprentice to P. Q., and then lying dead in St. B.'s Hospital, in the parish of, &c. in the city of L. aforesaid, and within the jurisdiction of the said J. B. as coroner of the said city of L. And that the said H. S. W., being a person of a wicked and turbulent mind, and diabolical disposition, and most unlawfully, wickedly, maliciously, falsely, and audaciously devising and intending to represent, insinuate, and make it be believed and thought as if the said J. B. had acted with passion, flagrancy, and injustice, in the execution of his office as coroner upon the said last mentioned inquisition, and thereby to detract, asperse, scandalize, vilify, and stigmatize the character of the said J. B., and unjustly to impeach and censure the conduct and behaviour of the said J. B. upon such last mentioned inquisition, and thereby (as much as in him the said H. S. W. lay) to bring the said J. B. into great scandal, infamy, disgrace and hatred, and contempt with all the liege subjects of our said present Sovereign Lord the King; and the said H. S. W., the sooner to accomplish, perfect, and bring to effect his most unlawful and wicked purposes last mentioned,

afterwards, to wit, on, &c. with force and arms, at L. aforesaid, to wit, at the parish of, &c. in the city of L. aforesaid, a certain other false, wicked, and malicious libel, entitled, &c. did most unlawfully, wickedly, and maliciously utter and publish, and did cause and procure to be uttered and published, in which said last mentioned false, wicked, and scandalous libel, of and concerning the said J. B., the coroner aforesaid, is contained false, feigned, wicked, scandalous, and malicious matters, according to the tenor following; that is to say, *(here insert the libel the first charged in the first count to have been published by H. S. W.)* to the great infamy, &c.; in contempt, &c; to the great damage, &c.; to the evil, &c; and against the peace, &c. [*Here add a fourth count, in same manner, for publishing the libel last mentioned in the first count.*]

County of } That B. B. late of N., in the county
 (to wit.) } of N. cordwainer, being a person of a
 wicked, uncharitable, and malicious mind and disposition, For a libel, by hanging the prosecutor in effigy.
 and unlawfully, wickedly, and maliciously devising, contriving, and intending, as much as in him lay, to injure, oppress, aggrieve and vilify the good name, fame, credit and reputation, of G. H., surgeon, and to bring him into great scandal, infamy, contempt, ridicule, and disgrace, on, &c. at, &c. aforesaid, did unlawfully, wickedly, and maliciously make, and cause to be made, a certain gibbet, and also a certain effigy or figure, intending to represent the said G. H., the said effigy or figure having in one of its hands a certain instrument, commonly called a clyster pipe, and in the other of its hands a parchment label, with the letters G. H. inscribed on it; and afterwards, to wit, on the same day and year aforesaid, at N. aforesaid, in the county aforesaid, unlawfully, wickedly, and maliciously erected, set up, and fixed, and caused and procured to be set up, erected, and fixed, the said gibbet or gallows in and upon a certain piece of ground near to a certain common King's highway, there commonly called the London Road, passing through the town of N. aforesaid, in the county aforesaid, and kept

and continued, and caused and procured to be kept and continued, the said gibbet so there erected, set up and fixed as aforesaid, for a long space of time, to wit, for the space of three days then next following, and during that time, to wit, on the day and year aforesaid, and on every day between that day and the day of the said month of then next following, at N. aforesaid, in the county aforesaid, unlawfully and wickedly, and maliciously hung up and suspended, and caused and procured to be hung up and suspended, the said effigy or figure so having in one of its said hands the said clyster pipe, and in the other the said label, so intended to represent the said G. H. to and upon the said gibbet, and kept and continued, and caused and procured to be kept and continued, the said effigy or figure intending to represent the said G. H. as aforesaid, so hung up and suspended as aforesaid, for a long space of time, to wit, for the space of twelve hours on each of those respective days, and during those times on those respective days, there unlawfully, wickedly, and maliciously published and exposed the said gibbet, with the said effigy or figure, so intended to represent the said G. H. as aforesaid, thereto suspended, to the sight and view of divers and very many of the liege subjects of our said Lord the King, passing and repassing in and along the common King's highway aforesaid, to the great scandal, infamy, ridicule, and disgrace of the said G. H., in contempt of our said Lord the King and his laws, to the evil example of all others in the like case offending, and against the peace, &c.

Against the defendant for publishing a libel against the churchwardens, and overseers of a parish, accusing them of having been guilty of fraud, concerning the poor rates, &c.

County of } The jurors, &c. that A. B., of, &c.
(to wit.) } being a person of a most wicked and malicious temper and disposition, and unlawfully, and unjustly, wickedly, and maliciously devising, designing, contriving, and intending to defame, asperse, scandalize, and vilify the characters of P. Q., churchwarden of the parish of in the county of M. M., and N. N., all overseers of the poor of the said parish, and also R. S., X. Y.,

Z. Z., &c. now and at the time of the writing, printing, and publishing, the false, scandalous, and defamatory libel, hereinafter mentioned, vestry-men and inhabitants of the said parish of, &c. and most unlawfully, unjustly, wickedly, and maliciously devising, contriving, designing, and intending, as much as in him the said A. B. lay, to insinuate and cause it to be believed that they the said P. Q. as such churchwarden, &c. as aforesaid, and that they the said M. M. and N. N., as such overseers as aforesaid, and the said R. S., &c. as such vestry-men of the said parish as aforesaid, had been guilty of very great frauds, abuses, and misdemeanors in the execution of their several and respective offices aforesaid, in relation to the rates made for the relief of the poor of the said parish of, &c. and other matters relating to the said parish, upon, &c. with force and arms, at, &c. in, &c. did unlawfully, and maliciously, wickedly, and scandalously, compose, write, print, and publish, and did cause and procure to be composed, written, printed, and published, a certain wicked, infamous, scandalous, and defamatory libel, of and concerning them the said P. Q., and the said R. S., &c. [*insert all the names*] entitled [*insert the title of the libel*] in which said scandalous and defamatory libel are contained among other things, divers wicked, scandalous, malicious, and defamatory matters, that is to say, in one part thereof according to the tenor following, that is to say, [*Here set out part of the libel with innuendoes explanatory.*] And in another part thereof according to the tenor following, that is to say, [*Here set out another part of the libel.*] And in another part of the same scandalous and infamous libel to the tenor following, that is to say, &c. to the great scandal, infamy, and disgrace of them the said P. Q. &c. in contempt, &c. to the evil and pernicious example, &c. and against the peace, &c.

County of } That A. B., late of, &c. being a person of a wicked and malicious disposition, and wickedly and maliciously contriving and in-
 (to wit.) }
 position, and wickedly and maliciously contriving and in-

For a libel on a lady deceased, accusing her of incontinence.

tending to injure, defame, disgrace, and vilify the memory, reputation, and character of E. D., late of &c. widow, deceased, relict of M. J. D., esq. late of &c. also deceased, and to bring the family and descendants of the said E. D. into great scandal, infamy, and contempt,* and to cause it to be believed that the said E. D. in her life-time, was a person of a depraved, vicious, and lewd mind and disposition and incontinent behaviour, and destitute of conjugal affection and fidelity toward her said husband, the said M. J. D.; and that the said E. D. had led a wicked, profligate, and adulterous course of life, and had been continually from the time of her marriage with the said M. J. D. till near the time of her decease, addicted to promiscuous and adulterous intercourse with divers menial servants in the service of her the said E. D., on, &c. at, &c. with force and arms, wickedly, maliciously, and unlawfully did print and publish, and cause to be printed and published in a certain newspaper called and entitled theshire Telegraph, a certain false, scandalous, and malicious libel, of and concerning her the said E. D., [*here set forth the libel with the necessary innuendoes*] to the great disgrace and scandal of the memory, reputation, and character of the said E. D., in contempt, &c. to the evil example, &c. and against the peace,† &c.

NUISANCES.†

For erecting and keeping shut a gate across a highway for foot and horse passengers.

County of } The jurors, &c. that from the time
(to wit.) } whereof the memory man is not to the

* Those words in italicks form a necessary allegation of the indictment for libelling a deceased person. *R. v. Topham*, 4 T. R. 126.

† The excitement to the relations of the deceased to break the peace, is the very gist of an indictment for libelling a person who is no longer alive to feel or resent the injury. *Ibid.*

‡ A common nuisance is an offence against the public, either by doing a thing which tends to the annoyance of all the king's subjects, or by neglecting to do a thing which the common good requires. 1 Haw. c. 75.

To this definition may be referred all the precedents here inserted,

contrary, there was and yet is a certain ancient common highway, in the parish of M., in the county of N., leading from a certain place then called the Green Balk, in the parish and county aforesaid, into, through, and over a certain public King's highway, called the great North Road, and from thence to a certain common, called and known by the name of East Common, in the parish of B., in the said

which may be *generically* divided into nuisances of *commission*, and nuisances of *omission*; and *specifically* into all those offences, which, under various denominations, directly tend to the injury or inconvenience of the *public generally*. Colloquially, indeed, certain kinds of injuries to individuals are called by the name of *nuisances*, but incorrectly, for, as Lord Coke says, If it be a *private* nuisance, a man shall have his action upon the case, and recover his damages, but if it be a *public* nuisance, he shall *not* have an action upon the case, and this the law hath provided for avoiding of multiplicity of suits. The law for a common nuisance hath provided an apt remedy, by presentment or indictment at the suit of the king, in the behalf of all his subjects; unless any man hath also a particular damage, as if he and his horse fall into a ditch made across a highway, whereby he received hurt and loss, there for his special damage which is not common to others, he shall have an action upon the case. 1 Inst. 56. This doctrine, however, so far as it regards the inadmissibility of private action for public nuisances, is to be received with considerable qualification. R. v. Dewsnap, 16 E. R. 396.

Nuisances of *Commission* ordinarily consist in placing obstructions on highways; carrying on offensive trades, callings or manufactures; dangerously keeping, or mischievously using in any manner, gunpowder or other combustibles; keeping disorderly houses of all descriptions; exposing in public any objects generally dangerous to health, or personal safety, or offensive to decency, and subversive of public morals. 1 Russel, C. and M. 427. It is laid down by Lord Ellenborough, that every unauthorized obstruction of a highway, to the annoyance of the king's subjects, is a nuisance, and an indictable offence, 3 Campb. 227. Thus, where a waggoner carrying on an extensive concern constantly suffers waggons to stand on the side of the highway on which his premises are situate an unreasonable time, he is guilty of a nuisance, 6 E. R. 427. 2 Smith, 424. And if stage coaches regularly stand in a public street, though for the purpose of accommodating passengers, so as to obstruct the regular track of carriages, the proprietor may be indicted, 3 Campb. 224.

Nuisances of *Omission* usually arise out of the negligently maintaining, repairing and keeping, highways, bridges, parapets, ferries, &c. &c. 3 Chit. C. L. 565.

county of N., for all the liege subjects of our said Lord the King and his predecessors to go, return, and pass on foot and on horseback, at their free will and pleasure, and that on the day of in the year of our said sovereign Lord, &c. A. B. late of the parish of &c. with force and arms, at a certain place there in the parish of aforesaid, contiguous to, and on the East side of the great North Road aforesaid, unlawfully and injuriously did erect and cause to be erected a certain wooden gate of the length of fifteen feet, and of the height of four feet upon and across the said King's highway, leading from the place called the Green Walk aforesaid, to the great North Road aforesaid; and that the said A. B., the said wooden gate so as aforesaid erected and made from the said, &c. until the day of the taking this inquisition, with force and arms at, &c. aforesaid, unlawfully and injuriously did continue locked, and fastened with an iron chain, and yet doth continue, by which the King's common highway last aforesaid, during all the time aforesaid was so obstructed and stopped up that the King's liege subjects in, by, and through, the same highway could not, nor yet can go, return and pass on foot and on horseback so freely as they ought and were wont to do, to the great damage and common nuisance,* of all the liege subjects of our said Lord the King, going, returning, passing and re-passing, in, along, and through, the said last-mentioned common King's highway, to the evil example of all others in the like case offending, and against the peace, &c.

For digging a ditch and raising a hedge across a highway.

County of } That from the time whereof, &c.
 (to wit.) } [describe the highway as in the last.] for
 themselves and their goods, without any stoppage or

* After the foregoing observations, it is almost superfluous to repeat that every proceeding, whether for nuisances arising from neglect of duty, or for encroachments on the public conveniences, must contain the words "to the common nuisance of all the liege subjects of our Lord the now King," residing, passing, or using, &c. according to the facts, in its conclusion, 2 Stra. 688. See also *ante*, p. 101.

hindrance by any ditches, hedges or other obstacles whatsoever, nevertheless one A. B., late of, &c. on, &c. with force and arms, at, &c. aforesaid, in the place aforesaid, called, &c. upon the common highway aforesaid, a certain ditch and quickset hedge did make, and the said ditch and quickset hedge so as aforesaid made, doth yet continue and keep, to the great, &c. [*conclusion as before.*]

County of } The jurors, &c. that there was, &c. For erecting
(to wit.) } and that A. B. late of, &c. with, &c. at, and continuing
&c. unlawfully did erect and build, and cause and procure a house, part of
to be erected and built, a certain brick messuage and tene- which was on
ment, containing in length twelve feet, and six inches, and the highway.
in depth at the East end thereof five feet, and six inches, and
in depth at the West end thereof, two feet and nine inches,
and that the same was erected and built, and caused and
procured to be erected and built, by him the said A. B., in
and upon the said ancient, and common highway, at the
parish aforesaid, in the county aforesaid, to wit, opposite
to a certain dwelling-house of one G. H. there situate, and
the said part of the said messuage and tenement so erected,
and built, and caused and procured to be erected and built
by him the said A. B. as aforesaid, in and upon the said
ancient and common King's highway, at the parish afore-
said, in the county aforesaid, he the said A. B., from the
said day of in year aforesaid, until the day
of the taking of this inquisition, with force and arms, at
the parish aforesaid, in the county aforesaid, unlawfully
and injuriously did continue, and yet doth continue; by
reason and means whereof, the said ancient and common
King's highway was, during the time aforesaid, at the
parish aforesaid, in the county aforesaid, encroached upon,
narrowed and straitened, so that the King's liege subjects
in, by, and through, the said highway could not, nor yet
can go, return, &c. &c. (*as before.*)

County of } The jurors, &c. that there was, and For digging a
(to wit.) } yet is, &c. and that the said A. B., late hole in a public
street, and not

enclosing it,
whereby a
gentleman's
carriage going
along, the two
fore horses fell
in, and were
much hurt,
harness cut
away, &c.

of, &c. well knowing the premises, on, &c. in the year, &c. with force and arms, at the parish aforesaid, in the county aforesaid, in the said ancient and common King's highway, and public street there called street, unlawfully and injuriously did dig, and cause to be dug, a certain great pit, and hole, containing in circumference, twenty feet, and in depth five feet; and that he the said A. B., the said pit and hole so dug, and caused to be dug by him the said A. B., in the said ancient and common King's highway, and street as aforesaid, from the said twenty-first day of, &c. in the year aforesaid, until the day of taking this inquisition, at the parish aforesaid, in the county aforesaid, unlawfully and injuriously did, and yet doth cause, permit, and suffer to be, remain, and continue there without enclosing the same, and without keeping or affixing any light, or having any person at night near the said pit and hole to watch, notify, and shew the same, and the danger thereof, to the liege subjects of our said Lord the King, going, returning, passing, riding, and labouring in, upon, along, and through the said ancient and common King's highway and street, called street, at the parish of aforesaid, in the county aforesaid, by reason and means whereof, the liege subjects of our said Lord the King, during the whole time aforesaid, could not, nor yet can go, return, pass, ride, and labour, in, upon, along, and through the said ancient and common King's highway, with their horses, coaches, carts and carriages, as they have been used and accustomed, and were wont, and ought to do, without great peril and danger of their lives; and that on the day of in the said year of, &c. about the hour of ten in the night of the same day, at the parish of aforesaid, in the county aforesaid, as G. H., esq. and E. H., and M. H. (two of the daughters of the said G. H.) liege subjects of our said Lord the King, were going and passing in, upon, along, and through the said ancient and common King's highway, and public street, called street, there in a certain coach of him the said G. H., then and there drawn with four horses, the two fore horses so drawing the said coach then

and there fell into the said pit and hole so dug, and caused to be dug, and caused, permitted and suffered to be, remain, and continue, by him the said A. B. in the said ancient and common king's highway, and public street as aforesaid, whereby the said two horses were then and there very much hurt and bruised, and the traces and harness of the said two horses were then and there obliged to be, and were cut in pieces to disengage them from the said coach, and the said G. H., E. H., and M. H., were then and there very much terrified and affrighted, and put in great fear, apprehension and danger of losing their lives; to the great damage and common nuisance of all the liege subjects of our said Lord the King, in his, along, and through the said ancient and common King's highway, and public street, called with their horses, coaches, carts, and carriages, going, returning, passing, riding and labouring, to the great damage of them the said G. H., E. H. and M. H., to the evil, &c. and against the peace, &c. And the jurors, &c. that the said A. B., [*here go on with the first count, down to remain and continue, then say,*] by reason and means whereof, all the said liege subjects of our said Lord the King, during all the time aforesaid, could not, nor yet can go, return, pass, ride and labour with their horses, coaches, carts and carriages, in, upon, along, and through the said ancient and common King's highway, and public street as aforesaid, they have been used and accustomed, and were wont and ought to do without great peril and danger of their lives, to the great damage and common nuisance of all the liege subjects of our said Lord the King, in, by, along and through the said ancient and common King's highway, and public street, called street, with their horses, coaches, carts and carriages going, returning, passing and labouring, to the evil example of all others in the like case offending, and against the peace, &c.

Second count.

County of } The jurors, &c. that from, &c., &c., For leaving
 (to wit.) } and that A. B., late of, &c., on, &c., open an area
 with, &c., at, &c., in a certain part of the said common pavement.

King's highway and public street there, to wit, in the foot pavement of the said street, before the dwelling-house of him the said A. B. unlawfully and injuriously did leave open a certain area of the length of and of the breadth of belonging to him the said A. B. without putting or placing, or causing to be put and placed, any rails or other fence to enclose the same; and he the said A. B. from the said, &c., until, &c., with, &c., at, &c., the said area so as aforesaid, being in the said foot pavement of the said common King's highway and public street, unlawfully and injuriously did cause, permit, and suffer to be, remain, and continue open, by reason and means whereof the liege subjects of our said Lord the King, during the time aforesaid, could not, nor yet can go, return, and pass on foot in, by, and through the said common King's highway and public street, and as they were used and accustomed, and were wont and ought to do, without great peril and danger of their lives, to the great damage and common nuisance of all, &c. in, by, and through, &c. going, returning, and passing on foot, to the evil, &c., and against the peace, &c.

For exposing
raw skins near
to a highway,
and thereby
occasioning un-
wholesome
smells.

County of } The jurors, &c. that A. B., late of, &c.
(to wit.) } tanner and fellmonger, on, &c. and on
divers other days and times, between that day and the day
of taking this inquisition, with force and arms at the parish
aforesaid, in the county aforesaid, in a certain building and
yard belonging to him the said A. B. there situate, and being
also near a certain King's common highway, there leading
from, &c., into, &c., and along by the said building and
yard towards and into, &c., used, &c., from, &c., with, &c.,
to, &c., at their will and pleasure, unlawfully and injuriously
did make, and cause to be made, divers raw sheep skins
and other skins into leather, from the filth and slime where-
of, divers noisome and unwholesome smells, on the said, &c.
and on the said other days and times, between that day and
the day of the taking this inquisition, at the parish afore-
said, in the county aforesaid, did arise, so that the air

thereby was then and there, to wit, in that part of the said King's common highway, near to the said building and yard, in the parish and county aforesaid, greatly corrupted and infected, to the great damage and common nuisance of, &c. in and through that part of, &c. with their, &c. to the evil example, &c. and against the peace of our said Lord the King, &c.

County of } That P. Q., late of, &c. on, &c. with For stopping
 (to wit.) } force and arms, at, &c. a certain ancient an ancient
 watercourse adjoining to the King's highway, within the watercourse
 same parish, leading from the said town of B. in the county whereby the
 aforesaid, towards and unto the city of G. in the county of water over-
 G. aforesaid, with gravel and other materials, unlawfully and flowed the
 injuriously did obstruct and stop up, and the said water- adjoining high-
 course so as aforesaid, obstructed and stopped up from the way, and da-
 said, &c. until the day of the taking of this inquisition, at, maged the
 &c. aforesaid, unlawfully and injuriously did continue, by same.
 reason whereof the rain and waters that were wont and ought
 to flow and pass through the said watercourse, on the same
 day and year aforesaid, and on divers other days and times
 afterwards, between that day and the day of the taking of this
 inquisition, did overflow and remain in the said King's com-
 mon highway there, and thereby the same was, and yet is,
 greatly hurt, damaged, impaired, and spoiled, so that the
 liege subjects of our said Lord the King through the same
 way, with their horses, coaches, carts, and carriages, then
 and on the said other days and times, could not, nor yet can
 go, return, pass, repass, ride, and labour, as they ought
 and were wont to do, to the great damage and common
 nuisance of all the liege subjects of our said Lord the King,
 through the same highway going, returning, passing, re-
 passing, riding, and labouring, and against the peace, &c.

County of } That M. O., late of, &c. on, &c. with For erecting
 (to wit.) } force and arms, at, &c. aforesaid, in and weirs and
 across a certain navigable river, being the King's common dams in the
 highway there, called the River Trent, otherwise the Trent, river Trent,
and thereby
injuring the
navigation.

used for all the liege subjects of our said Lord the King, with their barges, boats, and other vessels, to navigate, sail, pass and repass, in and along, at their free will and pleasure, unlawfully and injuriously did erect and place, and cause to be erected and placed, certain weirs and eel dams, to wit, four weirs and four eel dams, respectively composed of wood, faggots, gravel, earth, and stones, and being of great height and length, to wit, each thereof six feet in height, and sixty feet in length, and the same weirs and eel dams, and each of them respectively, so as aforesaid erected and placed in and across the said river and highway, from the said, &c. until the day of the taking of this inquisition at, &c. aforesaid, he the said M. O. unlawfully, obstinately, and injuriously, did continue, and still doth continue, by reason whereof the liege subjects of our said Lord the King during all the time aforesaid, could not, nor can they now, navigate, sail, pass and repass, with their barges, boats, and other vessels, in and along the said river and highway, as they before used and were accustomed to do, and still of right ought to do, without great peril and danger of their lives, and the destruction and loss of their said barges, boats, and other vessels, to the great damage and common nuisance of all his Majesty's liege subjects, in, along, and upon the said river and common King's highway, then passing, repassing, and navigating. And the jurors, &c. aforesaid upon their oath aforesaid, do further present, that the said M. O. afterwards, to wit, on the said, &c. and continually from thence until the day of the taking of this inquisition, with force and arms, at, &c. aforesaid, four other weirs and four other eel dams, &c. [*as in the first count*] which had been before that time unlawfully erected, &c. unlawfully, obstinately, and injuriously, *did continue, and still doth continue, the same so erected and placed, &c. [by reason whereof, &c. as before.]*

Second count
for continuing
weirs and
dams erected
by others.

For a nuisance *County of* } That from time whereof, &c. there
in diverting a (to wit.) } has been and still is a common water-
watercourse }
running into a course, near a certain place, called Fos-dike, within the pa-

rish of B. in the said county of Lincoln, which continually ^{public pond or reservoir.} during all the said time, at all times of the year hath run and been used and accustomed, and of right ought without any obstruction or impediment, to run out of a certain place, called the great wash, situate and being in the parish of S. &c. into and along the common highway, there leading from, &c. to, &c. and into a certain pond and reservoir in the said common highway, there, and from the said pond and reservoir into the lands of H. D., at which said watercourse, pond, and reservoir the inhabitants of the said parish of B. and all other his said Majesty's subjects, in and through the said common highway passing and repassing, all the said time have used, and of right been accustomed to water their horses and other cattle at their free will and pleasure. Nevertheless, the jurors, &c. present, that P. Q., late of, &c. in the county aforesaid, on, &c. with force and arms, at, &c. aforesaid, in and across the said watercourse, in the said highway there, a certain mound, bank, or dam, did then and there make, erect, and build, and the same did raise so high, that the said water in its said ancient course was obstructed, and into the said pond and reservoir did not run as it was used, and accustomed, and ought to do, so that the inhabitants of the said parish, and all other his Majesty's subjects, in and through the said common highway passing and repassing, were, and still are, deprived of the use of the said pond and reservoir of water for their cattle, and hindered from enjoying the same as they ought, and were wont to do, to the great damage, and common nuisance, not only of all the inhabitants of the said parish of B. but of all other the liege subjects of our said Lord the King, in and through the said common highway passing, and going, and against the peace, &c.

County of } [Describe the highway as before] And
 (to wit.) } the jurors, &c. further present, that there ^{For cutting a gap in a bank, which confined water in a watercourse, whereby the water overflowed a high-}
 now is, and from time whereof, &c. there hath been a certain watercourse running and flowing through and under a certain bridge, called Osmond's bridge, to wit, at, &c. aforesaid.

way adjoining,
and injured the
road.

And the jurors, &c. do further present, that A. B., late of, &c. aforesaid, and C. D., late of, &c. aforesaid, on, &c. at, &c. aforesaid, did unlawfully cut into, dig away, and remove, and cause to be cut into, dug away, and removed, great part of a certain bank, dam, or mound of earth, then and there lying and being on the East side of the said watercourse, near to the said bridge, and between the said watercourse, and a certain ditch or watercourse on the South side of the said highway, and unlawfully, and injuriously kept and continued, and caused to be kept and continued, the said part of the said bank, dam, or mound of earth so cut into, dug away, and removed as aforesaid, for a long space of time, to wit, from thence until the day of taking this inquisition, whereby divers large quantities of water, during the time aforesaid, to wit, on, &c. and on divers other days, &c. were diverted and turned from the usual and accustomed course and channel, and ran and flowed from and out of the said watercourse into the said ditch, on the south side of the said highway, and from thence into, upon, and over the said highway, and greatly overflowed, damaged, and spoiled the same, so that the liege subjects of our said Lord the King could not, during the times last aforesaid, go, return, pass, ride, and labour, in and upon, over and along, the said highway, on foot or with horses, carts, or carriages, as they were before used and accustomed to do, without great danger of their lives, and the loss of their goods; to the great damage, &c. [*conclusion as before.*]

Against night-
men for laying
soil in the
streets.

County of } That A. H. late of, &c. and H. A.
(to wit.) } late of, &c. on, &c. with force and
arms, at, &c. in a certain common street there, being the King's highway, called P. street, (used for all the King's subjects, with their horses, coaches, and carriages, to go, return, ride, pass, repass, and labour at their free will and pleasure,) unlawfully, and injuriously did pour out, discharge, place, and leave, and cause to be poured out, discharged, placed, and left, a great quantity of dung, human excrement, and other filth, by reason of which divers hurtful and unwholesome smells and stench from the

said dung, excrement, and other filth, did then and there arise, and thereby the air there became and was then and there greatly corrupted and infected, to the great damage, &c.

County of } That P. B. late of, &c. on, &c. with For shooting dirt in a foot-
(to wit.) } force and arms, at, &c. aforesaid, in a way.
 certain common footway there, leading from that part of N. green, which is in the parish aforesaid, in the county aforesaid, towards and unto the parochial church of the same parish, in the said county, did unlawfully and injuriously put, place, and lay, and cause to be put, placed, and laid, two cart loads of dirt and other filth, and the said dirt and filth, in the said footway, from the said, &c. until the day of the taking of this inquisition, at, &c. aforesaid, unlawfully and injuriously did permit and suffer to be and remain, by reason whereof the footway aforesaid, during the time aforesaid, was, and yet is, greatly obstructed and straitened, so that the said liege subjects of our said Lord the King, through the same footway, could not, during the time aforesaid, nor yet can, go, return, pass, repass, and labour as they ought and were wont to do, to the great damage, &c.

County of } That on, &c. there was, and from For laying dung and rubbish in a carriage way to a church.
(to wit.) } thence hitherto there hath been and still
 is, a certain common way leading from the town of B. in the said county of S. to the parish church of B. aforesaid, there, for all the inhabitants of the parish of B. aforesaid, to go, return, pass, and repass on foot and on horseback, and with their coaches and carriages, for the attending and bearing of divine service in the same parish church, and that H. F. late of, &c. on, &c. and on divers other days and times, as well before as afterwards, with force and arms, at, &c. aforesaid, in and upon the said way, there unlawfully and injuriously put, placed, and laid, and caused and procured to be put, placed, and laid, divers large

quantities of dung, muck, straw, and rubbish, that is to say, twenty cart loads of dung, twenty cart loads of muck, twenty cart loads of straw, and twenty cart loads of rubbish, and the said dung, muck, straw, and rubbish, so put, placed, and laid as aforesaid, continually from the said, &c. until the day of the taking of this inquisition, hath permitted to be and remain, and still doth permit to be and remain, and obstinately continued, and still doth continue the same, in and upon the said way, there, by reason whereof the said way hath, for all the time last aforesaid, been straitened and obstructed, insomuch that the said inhabitants of the said parish could not, during all the time last aforesaid, nor can they now go, return, pass, and repass from the said town of B., to the parish church aforesaid, in, along, and through the said way there, as they ought and were used and accustomed to do, and still of right ought to, but during all the time last aforesaid were, and still are greatly obstructed and hindered in the use and enjoyment of the said way there, to the great grievance and common nuisance of all the inhabitants of the said parish, going, returning, passing, and repassing, in, along, and through the said way there, and against the peace of our said Lord the King, his crown and dignity.

For letting a
waggon stand
in a public
street, so as to
incommode
passengers.

County of } That A. B. late of, &c. before and at
(*to wit.*) } the times hereafter mentioned, was, and
still is, a proprietor of divers waggons for conveyance for hire of goods of others to and from E. and being such proprietor, he, with force and arms, on, &c. and on divers other days and times between that day and the eighth day of January, in the year of our Lord, &c. in the parish of, &c. in the city and county aforesaid, without just cause or excuse, but wrongfully and unjustly did cause and permit divers, to wit, twenty waggons to stand and remain for a long time, to wit, ten hours on each day, before his warehouse, situate in a public street and highway, called within such parish, city, and county, and divers cumbersome and other parcels which had been conveyed, or were intended to be conveyed,

in such waggons, to lie during such time scattered about such public street, to the great hindrance, impediment, and annoyance of all his Majesty's subjects passing and repassing such street, &c. Second count, that the defendant permitted divers waggons to stand in the said public street and highway, and there to remain before his warehouse for a long and unreasonable time, to wit, &c. by which the King's subjects were, during that time, much impeded and obstructed, &c.

County of } That A. B. late of &c. on, For letting off
fireworks in a
public street.
(to wit.) } &c. at, &c. in a certain common and
public street and highway there for all the liege subjects of
our said Lord the King, on foot, and with their horses,
coaches, carts, and carriages, to go, return, ride, pass,
and repass, and labour, at their free will and pleasure,
wrongfully, unlawfully, and injuriously, did fire certain
fire-works, called rockets, serpents, and Roman candles,*
whereby the said public street and common highway was
then and there greatly obstructed, and divers liege sub-
jects of our said Lord the King, then and there standing,
being, passing, and repassing, in and along the said last-
mentioned public street and common highway, were then
and there greatly terrified and put in great peril and danger
of bodily harm, and could not then go, return, pass, and
re-pass, on foot, and with their horses, coaches, carts, and
carriages, in and along the said last-mentioned public
street and common highway, as they ought to have done,
and had been used and accustomed to do, and otherwise
might and would have done, to the great terror, alarm,
danger, and common nuisance of all the liege subjects of

* The 9 & 10 Wm. 3. c. 7. provides specific penalties for this offence, to be levied by distress after summary correction by a justice; yet, by the first section, the offence is declared to be a common nuisance; therefore it may be indicted as such either at common law, or under the statute. 4 T. R. 202.—The making, selling, throwing, or permitting to be thrown from any house; or making, or selling any moulds for making, or aiding in making any fireworks, are all declared to be offences by the different sections of the statute.

our said Lord the King, in and near the said public street and highway inhabiting and residing, and of all other the liege subjects of our said Lord the King there standing, being, and passing, in contempt of our said Lord the King and his laws, to the evil example, &c. and against the peace, &c. and against the form of the statute, &c.

For carrying
on the trade of
a trunk maker
so near several
dwelling-
houses as to be
a nuisance.

County of } That B. E. late of, &c. to wit, on,
(*to wit.*) } &c. and on divers other days and
times between that day and the day of taking this inquisition with force and arms, at, &c. aforesaid, in a certain work shop, there situate near the dwelling-houses, chambers, and residences of divers subjects of our said Lord the King, therein dwelling and residing, and also near divers public King's common highways, there unlawfully and injuriously did set up, exercise, and carry on the trade and business of a trunk maker, and on the said, &c. and on the other days and times aforesaid, there at early hours in the morning, and in the day time, and at late hours in the nights of the days aforesaid, unlawfully and injuriously did make and cause and procure to be made, divers loud, harsh, tremendous, and annoying sounds and noises, by then and there hammering, and striking, and causing and procuring to be hammered and stricken divers trunks and boxes made of wood, iron, and copper, and divers pieces of wood, tin, brass, copper, iron, and other metals, with divers large hammers, and other implements and instruments made of wood and iron, by reason whereof the said subjects of our said Lord the King, so dwelling, residing, and living in the said dwelling-houses, chambers, and residences near to the said workshop, on the several days and times, were and still are greatly annoyed, and disturbed, and incommoded in the use, occupation, and enjoyment of their said dwelling-houses, chambers, and residences, and greatly interrupted in the exercise and pursuit of their respective lawful professions, businesses, and transactions, and deprived of their natural rest and sleep, and rendered and made in other respects very uncomfortable, and thereby

also the subjects of our said Lord the King, in, and through, and along the common highway aforesaid, passing, re-passing, and travelling, were and are greatly annoyed and disturbed, to the great damage, &c.

County of } That P. Q. late of, &c. and R. S. For keeping a
(to wit.) } late of, &c. on, &c. and on divers disorderly
other days and times between that day and the day of the house for fight-
taking of this inquisition, with force and arms, at the parish ing cocks, &c.
aforesaid, in the county aforesaid, did keep and maintain,
and yet do keep and maintain a certain common ill-
governed and disorderly house, and in the said house for
his own lucre and profit, certain evil and ill disposed per-
sons of ill name and fame, and of dishonest conversation,
to frequent and come together, then, and the said other
days and times, there unlawfully and willfully did cause
and procure, and the said persons in the said house then,
and the said other days and times there to be and remain,
fighting of cocks,* boxing, playing at cudgels, and mis-
behaving themselves, unlawfully and wilfully did permit,
and yet doth permit, to the great damage and common
nuisance of all the subjects of our said Lord the King, in-
habiting near the said house, and against the peace of our
said Lord the King, his crown and dignity.

County of } That M. M. late of, &c. on, &c. being Against a per-
(to wit.) } an idle and evil disposed person, and son for keeping
not minding to gain his living by honest labour, on, &c. a gaming-house
and on divers other days and times between that day and and a billiard
the day of the taking of this inquisition, with force and table.
arms, at, &c. a certain common gaming house there
situate, for his lucre and gain unlawfully and injuriously
did keep and maintain,† and in the same common gaming

* Cockfighting is in itself an illegal pastime, and an indictment will lie for it. *Squires v. Whisken*, 3 Campb. 148; *R. v. Higginson*, Burr. R. 1233.

† Keeping the house for the specified purpose is the offence, and therefore, like keeping a bawdy-house, general evidence will support an indictment. See *ante*, p. 362.

house, on, &c. aforesaid, and on the said divers other days and times, there unlawfully and injuriously did cause and procure divers idle and ill disposed persons to frequent and come together to game and play, and the same idle and ill disposed persons to be and remain in the said common gaming house, and to game and play together, on, &c. aforesaid, at, &c. and on the said other days and times there did unlawfully and injuriously procure, permit, and suffer, by means whereof divers noises, disturbances, and breaches of the peace of our said Lord the King, then, and on the said other days and times were there occasioned and committed, to the great encouragement of idleness and dissipation, to the great damage and common nuisance of all the liege subjects of our said Lord the King, and against the peace, &c. [Second count like the first, only saying, "a certain common gaming room in a certain house."] And the jurors aforesaid, upon their oath aforesaid, do further present, that the said M. M. being such ill disposed person, and not minding to gain his living by honest labour as aforesaid, on the said, &c. and on divers other days and times between that day and the said, &c. with force and arms, at, &c. aforesaid, a certain other gaming house there situate, unlawfully and injuriously did keep and maintain, for the gaming and playing at a certain and unlawful game with dice called hazard,* and in the said last mentioned common gaming house, on the said day of in the year aforesaid, and on the said last mentioned days and times, there unlawfully and unjustly did cause, procure, permit, and suffer divers idle and ill disposed persons to frequent and come together to game and play together at the said unlawful game called hazard, and the said last mentioned idle and ill disposed persons to be and remain in the said last mentioned common gaming house, and to game and play together at the said unlawful game called hazard, on the said, &c., and on the said last-mentioned other days and times there did unlawfully and injuriously

Second count.

Third count.

* See stat. 33 Hen. 8. c. 9; 1 Hawk. c. 92; and 42 Geo. 3. 119, respecting *Little Goes*.

procure, permit, and suffer, and the said last mentioned persons, in the said last mentioned common gaming house there, on the said, &c. and on the said other days and times, by such last mentioned procurements, permission, and sufferance of the said M. M. did game and play together at the said unlawful game called, &c. to the great encouragement, &c. [*as in first count.*] [*Fourth count like Fourth count. the third, saying, "common gaming room," &c. as before.*]

County of } That T. D. late of, &c. on, &c. and } For boiling
(to wit.) } on divers other days and times, between } bullock's blood
that day and the day of the taking of this inquisition, with } for making
force and arms, at, &c. aforesaid, in a certain building } colours.
belonging to the dwelling-house of the said J. B. there
situate and being, and also near the dwelling-houses of
divers subjects of our said Lord the King, and near divers
public streets and common highways there, did unlawfully
boil and cause to be boiled, a great quantity of bullock's
blood and other filth, for the making and mixing of colours,
whereby divers noisome and unwholesome smells, on, &c.
aforesaid, and on the said other days and times during the
time aforesaid, at, &c. aforesaid, did from thence arise, so
that the air was thereby greatly corrupted and infected, to
the great damage and common nuisance of all the liege
subjects of our said Lord the King, not only there inhabit-
ing and residing, but also going, returning, passing, and
repassing, through the said streets and highways there, and
against the peace, &c.*

* In order to constitute a nuisance by the exercise of trade, &c. it is not necessary that the smell or other inconvenience complained of should be unwholesome; it is sufficient if it impairs the enjoyment of life or property, 1 Burr. 333. And the material increase in a neighbourhood of noisome smells is said to be indictable. Peake, 291. If the prosecutor be one of the persons whose comfort the annoyance particularly affected, he will be entitled to his costs as a party grieved, under 5 W. & M. c. 11. s. 3. 16. East. 194.

For erecting a furnace with a boiler, and using it for the boiling of tripe and offal of beasts. *County of* } *(to wit.)* } That T. D. late of, &c. on, &c. with force and arms, at, &c. near the dwelling-houses of divers liege subjects of our said Lord the King there, and also near divers streets and common highways there, did unlawfully and injuriously erect and set up, and cause to be erected and set up a certain furnace, with a boiler, to be used for boiling of tripe, and other entrails, and offal of beasts, and that the said T. D. on the said, &c. and on divers other days and times between that day and the day of the taking of this inquisition, at, &c. aforesaid, divers large quantities of tripe and other entrails, and offal of beasts, in the said boiler, unlawfully and injuriously did boil, whereby divers noisome and unwholesome smokes and smells, did then, and on the said other days and times, from thence there arise, so that the air there was greatly corrupted and infected, to the great damage and common nuisance of all the liege subjects of our said Lord the King, not only near the same place inhabiting and residing, but also in and through the said common streets and highways going, returning, passing, and re-passing, and against the peace, &c.

For using a shop or a market as a slaughter-house for killing sheep and calves. *County of* } *(to wit.)* } That P. Q. late of the parish of in the city of &c. butcher, on, &c. and at divers other days and times then before at, &c. in a certain shop of him the said P. Q., situate and being in a common market place called the shambles, the said market being a common passage for all the subjects of our said Lord the King, with their goods, chattels, and merchandizes, to go, return, pass, and repass, at their free will and pleasure, did unlawfully and injuriously kill and slay, and cause to be killed and slain six sheep and two calves, and the excrements, blood, entrails, and other filth, coming from the said sheep and calves, did then and on the said other days and times respectively, there cause and permit to lie and remain in the said shop for a long time, to wit, for the space of six hours on each of those days, whereby divers filthy and unwholesome smells and stench from the

excrement, blood, entrails and other filth, coming from the sheep and calves aforesaid, then and on the said other days and times respectively, there did arise, and the air there was thereby greatly corrupted and infected, to the great damage and common nuisance not only of all the liege subjects of our said Lord the King near there inhabiting and dwelling, but also of all other the liege subjects of our said Lord the King, in, by, and through, the said common market and passage, going, returning, passing, repassing, and labouring, to the evil example, &c. and against the peace, &c.

County of } That B. B. late of, &c. on, &c. and
(to wit.) } on divers other days and times, between
that day and the day of the taking of this inquisition, with
force and arms at, &c. aforesaid, to wit, in a certain common
and public highway there, called Bishop's Wharf, unlawfully
and injuriously did put, place, and leave, and caused and
procured to be put, placed, and left, divers large quantities
of dung* and filth, whereby divers noxious and unwhole-
some smells from the said dung and filth did then and
there arise, and thereby the air there became and was
greatly corrupted and infected, to the great damage and

For laying
dung near a
public street,
whereby the
air was in-
fected and in-
habitants an-
noyed.

* Length of time, it is universally allowed, will not *justify* a nuisance under any circumstances, (1 Russel, C. & M. 445, 446.) But length of time, accompanied by particular circumstances of public convenience of one kind, opposed to the public inconvenience of another, will sometimes go a great way in making both judges and jurors very loth to convict. One case is instanced in R. v. Smith, 4 Esp. 111. and another is continually occurring respecting the subject of this precedent; viz. dung, fish, sea weed, and other descriptions of manure deposited for short periods near the places where collected, in order to be taken to neighbouring fields for the improvement and promotion of agriculture. Large quantities of manure are frequently collected in large cities, and laid in heaps on the banks of canals and navigable rivers, for conveyance by barges and boats. In these, and such like instances, the general benefit appears to counterbalance the local inconvenience, especially if the nuisance remain no longer on each occasion than the necessity of the case require.

common nuisance not only of all the liege subjects of our said Lord the King inhabiting and residing near the place where the said dung and filth was so put, placed, and left as aforesaid, but also of all other liege subjects of our said Lord the King, in, by, and through the said highway, and near the place aforesaid, going, returning, passing, and repassing, and against the peace of our said Lord the King, his crown and dignity.

For keeping a
furious dog un-
muzzled near
highway.

County of } That J. B. late of the parish of N., in
(*to wit.*) } the county of N., butcher, on the
of, &c. and on divers other days and times between that day and the day of the taking of this inquisition, at, &c. aforesaid, near unto the King's common highway there, unlawfully did keep, and still doth keep, a certain large dog, of a very fierce and furious nature, and the said dog, on the said, &c. and on the said other days and times, at, &c. aforesaid, near unto the said highway there, unlawfully did permit, and suffer, and still doth permit and suffer to go unmuzzled, and at large, he the said J. B. at the said several days and times, well knowing the said dog to be of a very fierce and savage nature and disposition, and prone to bite, worry, and injure all persons passing and repassing on the said highway, by reason whereof the liege subjects of our said Lord the King, on the said, &c. at, &c. aforesaid, could not, nor can they now go, return, pass, and labour in and through the said highway there, without great hazard and danger of being bit, maimed, and torn by the said dog, and losing their lives, to the great damage, terror, and common nuisance of all the liege subjects of our said Lord the King, in, by, and through the said highway there, going, returning, passing, repassing, and labouring, to the evil example, &c. and against the peace, &c.

For keeping
hogs near a
public street.

County of } That H. D. late of, &c. on, &c. and
(*to wit.*) } on divers other days and times between that day and the day of the taking of this inquisition with

force and arms, at, &c. near the dwelling houses of divers liege subjects of our said Lord the King, and also near divers public streets and common highways, there did and yet doth keep divers, to wit, six hogs; and the said hogs then and there to wit, on the said, &c. and on the said other days and times, at, &c. aforesaid, unlawfully and injuriously did feed, and yet doth feed, with the offal of fish, and entrails of beasts, and other filth, by reason whereof divers noisome and unwholesome smells and stench during the time aforesaid, did from thence there arise, and the air there was and yet is thereby greatly corrupted and infected, to the great damage and common nuisance not only of all the liege subjects of our said Lord the King there resident and dwelling, but also to all the liege subjects of our said Lord the King passing and repassing in, by, and through the said streets and common highways there, to the evil example of all others in the like case offending, and against the peace, &c.

County of } That R. O. late of, &c. yeoman, on, For knowingly
 (to wit.) } &c. and on divers other days and times, keeping an
 between that day and the day of the taking of this inquisition, unlawfully did keep at large, and still doth keep at large, a certain bull, of a very fierce, furious, and unruly nature, in a certain open field called the milking pasture, situate, lying, and being at the parish of N., in the said county of M., (the same field, on the days and times aforesaid, and still being, in the possession and occupation of him, the said R. O.,) and, that before and at the time of committing of the offence hereafter mentioned, there was, and still is, a certain ancient common and public footway, leading from the town of M. in the parish aforesaid, through and along the said field, towards and unto the town of B., in the same county, used for all the liege subjects of our said Lord the King, to pass and repass, in, through, over, and along the same at their free will and pleasure, about their lawful affairs and business. And that the said bull, on, &c. at, &c. furiously ran at, to, and against one

unruly bull in a field through which there was a public footway.

W. T. D., a liege subject of our said Lord the King, then passing in, and along the said footway, in the said field, about his lawful affairs and business; and then and there, with its head and horns, furiously pushed at, cast down, and prostrated the said W. T. D. there, and greatly hurt, bruised, gored, and wounded the said W. T. D. in and upon the left shoulder of him, the said W. T. D., inso-much that his life was greatly despaired of. And the jurors aforesaid, upon their oath aforesaid, do further present, that the said bull afterwards, to wit, on the said, &c. and on the said other days and times above mentioned, at, &c. so being in the said field, and of such nature as aforesaid, furiously ran at, and after divers other liege subjects of our said Lord the King, then passing, and repassing, in and along the said footway, in the said field there, about their lawful affairs and business, and thereby greatly affrighted, terrified, and alarmed the said last mentioned subjects; and divers other liege subjects of our said Lord the King, on the days and times aforesaid, having occasion to pass, and repass, in and along the said footway, in the said field, could not, nor can they now pass or repass in and along the same without great hazard and danger of being torn, gored, and wounded by the said bull, (he the said R. O., on the said days and times respectively above mentioned, and long before, and still well knowing the said bull to be of such fierce, furious, and unruly nature, and accustomed to run at and after, and injure persons passing, and repassing, over, through, and along the said field there,) to the great damage of the said W. T. D., to the great terror and common nuisance of all the liege subjects of our said Lord the King, passing, and repassing, in and along the said footway, in the said field there, to the evil example of all others in the like case offending, and against the peace, &c. &c.

Indictment for exposing a child infected with the small	County of } (to wit.) }	That on, &c. E. R., an infant of tender age, to wit, about the age of four years, was infected, ill, and sick of and with a certain contagious,
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infectious, and dangerous disease and sickness called the small-pox, at, &c. And that M. B., the wife of C. B., late of, &c. aforesaid, having the care and nurture of the said E. R., well knowing the premises aforesaid, afterwards, and whilst the said E. R. was so infected, ill, and sick as aforesaid, to wit, on, &c. aforesaid, with force and arms, at, &c. aforesaid, unlawfully and injuriously did take and carry the said E. R. into and along a certain open public street and passage, called Market-street, situate in the parish of St. John, in the town of N., in the county of N. aforesaid, used for all the liege subjects of our said Lord the King on foot, to go, return, and pass in, along, and through, in which said public street and passage, there were divers liege subjects of our said Lord the King, and near unto and by divers dwelling-houses, habitations, and residences of divers liege subjects of our said Lord the King, then there dwelling, inhabiting, and residing, and unto and into a certain common highway, situate and being in, &c. aforesaid, used for all the liege subjects of our said Lord the King on foot, and with horses, coaches, carts, and carriages, to go, return, pass, ride, and labour in, along, and through, in and along which said common highway there, divers liege subjects of our said Lord the King were then going, returning, passing, riding, and labouring, and amidst, and among divers liege subjects of our said Lord the King, who then and there, to wit, in the same common highway, in the parish and county aforesaid, had met and assembled together, and that the said M. B. afterwards, and whilst the said E. R. was so infected, ill, and sick as aforesaid, to wit, on, &c. and on divers other days and times, between that day and the day of . . . in the same year, with force and arms, at, &c. aforesaid, wrongfully and injuriously did take and carry the said E. R. into and along the aforesaid open and public street and passage called, &c. and near unto and by the aforesaid dwelling-houses, habitations, and residences of divers liege subjects of our said Lord the King, there dwelling, inhabiting, and residing, and also near unto and by divers liege subjects of our said Lord the King, in the said open and public way and passage, on, &c. and on the said other days and

times there being, to the great and manifest danger of infecting with the said contagious, infectious, and dangerous disease and sickness called the small-pox, all the liege subjects of our said Lord the King, who, on the several days and times aforesaid, were in and near the aforesaid open and public way and passage, dwelling-houses, habitations, residences, and common highway, and who had not had the said disease and sickness, to the great damage and common nuisance of all the said last mentioned liege subjects of our said Lord the King; to the evil example of all other persons in like cases offending; and against the peace of our

Second count. said Lord the King, his crown, and dignity. And the jurors, &c. that the said M. B., well knowing that the said E. R. was so infected, ill, and sick as aforesaid, afterwards, and whilst the said E. R. was so infected, ill, and sick, to wit, on the said, &c. and on divers other days and times between that day and the said, &c. in the same year, with force and arms, at, &c. aforesaid, unlawfully and injuriously did take and carry the said E. R. into and along the aforesaid open public way and passage, called, &c. situate and being, &c. and near unto and by the aforesaid dwelling-houses, habitations, and residences of divers liege subjects of our said Lord the King, there dwelling, inhabiting, and residing, and also near unto and by divers liege subjects of our said Lord the King, in the said open public way and passage, on, &c. and on the said other days and times as last mentioned there being, to the great and manifest danger of infecting with the said contagious, infectious, and dangerous disease and sickness called the small-pox, divers and very many of the liege subjects of our said Lord the King, who on the said, &c. and on the said divers other days and times last mentioned, were in the said open and public way and passage, and who dwelled, inhabited, and resided there, and near thereto, and who had not had the said disease and sickness; to the great damage and common nuisance, &c. to the evil, &c. and against the peace, &c.

County of } The jurors, &c. present,* that from Indictment
 (to wit.) } the time whereof the memory of man is against the in-
 not to the contrary,† there was, and yet is, a certain habitants of a
 common and ancient King's highway, leading from the parish for not
 town of in the said (*county*, &c.) towards and unto repairing a
 within the same (*county*) used for all the King's sub- common high-
 jects, with their horses, coaches, carts, and carriages, to go, way.
 return, and pass, at their will; and that a certain part of the
 same King's common highway, commonly called
 situate, lying, and being in the (*parish*, &c.) of in the
 same (*county*) containing in length ‡ yards, and in
 breadth feet, on the day § of in the
 year of the reign of and continually after-
 wards until the present day, was, and yet is, very ruinous,
 deep, broken, and in great decay, for want of due repara-
 tion and amendment; || so that the subjects of the King
 through the same way, with their horses, coaches, carts,
 and carriages, could not, during the time aforesaid, nor yet
 can, go, return, or pass, as they ought and were wont to do,
 to the great damage and common nuisance of all the King's
 subjects through the same highway, going, returning, or
 passing, and against the peace of our said Lord the King;
 and that the inhabitants of the (*parish*, &c.) of
 aforesaid, in the (*county*) aforesaid, the said common high-
 way (*so in decay*) ought to have repaired and amended, and

* See *ante*, p. 101. Presentment by a justice of the peace for a similar offence.

† This allegation of the antiquity of the road is now commonly omitted, and the language generally runs that "long before, and at the time of the commencement of the nuisance hereinafter mentioned there was, and of right ought to be," &c. 9 T. R. 265.

‡ It is usual to state the *termini*, but it is doubted by some writers whether it be necessary. 2 Saund. 158. See 13 Geo. 3. c. 78.

§ Some specific day after the actual existence of the nuisance had commenced.

|| This is the last of the three requisites which comprise the grounds of prosecution; viz. that the subject has a claim to a highway; that it ought to be repaired by a particular parish, or place, or person; and that such duty of repair has been omitted.

still of right ought to repair and amend, when, and as often as, it should, shall, or may, be necessary.

Against inhabitants of a township for not repairing a road made by act of parliament.

County of } That before and upon, &c. there was
 (to wit.) } and continually from thence hitherto
 hath been and still is, a certain common and public King's highway, leading from, &c. to, &c. used for all the liege subjects of our said Lord the King, with their horses, coaches, carts, and carriages, to go, return, pass, ride, and labour, at their free-will and pleasure, and that a certain part of the said King's highway, situate, lying, and being in the township of, &c. being in the corner of a certain field in the said township called, &c. in the occupation of, &c. and extending from thence to the corner of a certain lawn in the said township, belonging to one, &c. and containing in length two hundred and forty-two yards, and in breadth eight yards, on, &c. aforesaid, and from thence continually afterwards until the day of the taking of this inquisition, at the township aforesaid, in the county aforesaid, was, and yet is, very ruinous, miry, deep, broken, and in great decay for want of due reparation and amendment of the same, so that the liege subjects of our said Lord the King, through the same way with their horses, coaches, carts, and waggons, could not during the time aforesaid, nor yet can go, return, pass, ride, and labour without great danger of their lives and the loss of their goods; to the great damage and common nuisance of all the liege subjects of our said Lord the King through the same way going, returning, passing, riding, and labouring; and against the peace, &c.; and that the said inhabitants of the said township of, &c. in the county aforesaid, the common highway as aforesaid, so as aforesaid being in decay, ought to repair and amend when and so often as it shall be necessary.

For not repairing a part of highway situ-

County of } That long before, and at the time of
 (to wit.) } the commencement of the nuisance here-

inafter mentioned, there was, and of right ought to have been, and still is, and of right ought to be, a certain common and public King's highway, leading from that part of the parish of St. Olave, in the city of L., and *county of the same city*, which lies near to a certain place there called the Dean's-yard, unto a certain place called and known by the name of the Old Lane, in that part of the parish of St. Olave which lies in the county of L., for all the liege subjects of our said Lord the King, with their horses, coaches, carts, and other carriages, to go, return, pass, repass, ride, and labour, at their will and pleasure; and that a great part of the said parish of St. O. is situate in the *city of L. and county of the same city*, and the residue of the same parish is situate in the *said county of L.*, and that a certain part of the said King's common highway, situate, lying, and being in that part of the said parish of St. O. which lies in the said county of L., commencing opposite to a certain cross called and known by the name of Cow-cross, situate in that part of the said parish of St. O. which lies in the said county of L., and extending to a certain place called Knight's-house, at the commencement of the Old Lane aforesaid, and containing in length two thousand and two hundred yards, and in breadth forty feet, on, &c. and continually afterwards, until the day of the taking of this inquisition, at that part of the said parish of St. O. which lies in the said county of L., was, and yet is, very ruinous, miry, deep, broken, and in great decay for want of due reparation and amendment of the same, so that the liege subjects of our said Lord the King, in and through the same part of the said way, so as aforesaid being in decay, with their horses, coaches, carts, and other carriages, could not, during the time last aforesaid, nor yet can go, return, pass, repass, ride, and labour, as they ought and were wont to do, without great danger of their lives, and the loss of their goods; to the great damage and common nuisance of all the liege subjects of our said

* The indictment must be against the whole parish, and not against that part only which lies in the county where the way is out of repair. 4 T. R. 498. See a similar precedent, 3 Chit. C. L. 572, and ante, 166.

Lord the King in and through the same way going, returning, passing, repassing, riding, and labouring, and against the peace of our said Lord the King, his crown, and dignity; and that the inhabitants of the said parish of St. O., in the city of L. and county of the same city, and the inhabitants of the same parish of St. O. in the said county of L., the said common and public King's highway, so being ruinous and in decay as aforesaid, during all the time aforesaid, ought to have repaired and amended, and still of right ought to repair and amend, when and as often as it should, or shall, or may be, necessary.

Against the
mayor and al-
dermen of G.,
for not repair-
ing an highway
which they are
bound to repair
by custom.

County of } That from time whereof the memory
(to wit.) } of man is not to the contrary, there was,
and has been, a certain ancient and common King's high-
way, leading from a certain place called Dunstan's Cell, in
the parish of All Saints, in the city of G., in the said county
of G., into a certain lane called Shire-lane, in the parish of
H., in the said county of G., for all the liege subjects of our
said Lord the King, and his predecessors, kings and queens
of this realm, by themselves, and with their horses, coaches,
carts, and carriages, to go, return, pass, repass, ride, and
labour, at their will and pleasure; and that a certain part
of the said King's highway, containing in length
yards, and in breadth feet, and lying in a certain
street called Bennet's-wall, in the parish of All Saints
aforesaid, in the said city of G. aforesaid, on, &c. and con-
tinually from thence afterwards, until the day of the taking
of this inquisition, at the said parish, in the said city
of G. and county of G., was, and yet is, miry, ruinous,
broken, dirty, and in great decay, for want of the due re-
paration and amendment of the same, so that the liege sub-
jects of our said Lord the King through the same way, by
themselves, and with their horses, coaches, carts, and car-
riages, could not during the time aforesaid, nor yet can go,
pass, repass, ride, and labour, without great danger of their
lives, and loss of their goods; to the great damage and

common nuisance of all the liege subjects of our said Lord the King through the same way going, returning, passing, repassing, riding, and labouring; and against the peace, &c. And that the mayor, aldermen, and burgesses of the city of G. aforesaid, by reason of ancient custom, whereof the memory of man is not to the contrary, for the passage of cattle and loaded carriages, in, upon, and through the said street called Bennet's-wall, being part and portion of the said highway leading from Dunstan's Cell aforesaid, in the said city of G., to the said parish of H., in the county of G. aforesaid, during all the time aforesaid, the common highway aforesaid, above particularly mentioned and described (so as aforesaid being in decay) have been accustomed to repair and amend, and of right ought to have repaired and amended, and still of right ought to repair and amend, when and as often as occasion hath required, and have not done it, &c. &c.

County of } That on, &c. there was, and from
 (to wit.) } thence hitherto hath been, and still is, a Against a county for suffering a public bridge to decay.
 certain common and public bridge, commonly called High-bridge, otherwise Haigh-bridge, situate and being in the parish of B., in the county of N., in the common King's highway leading from the town of B., in the county aforesaid, towards and unto the town of in the same county, being a common highway for all the liege subjects of our said Lord the King on foot, and with their horses, coaches, carts, and other carriages, to go, return, pass, repass, ride, and labour; and that the said common and public bridge, on the said, &c. aforesaid, and continually from thence until the day of the taking of this inquisition, at the parish of B. aforesaid, in the county aforesaid, was, and yet is, ruinous, broken, dangerous, and in great decay for want of needful and necessary upholding, maintaining, amending, and repairing the same: so that the liege subjects of our said Lord the King, in, upon, and over the said bridge, on foot, and with horses, coaches, carts, and carriages, could not, and cannot pass and repass, ride, and

Lord the King in and through the same way going, returning, passing, repassing, riding, and labouring, and against the peace of our said Lord the King, his crown, and dignity; and that the inhabitants of the said parish of St. O., in the city of L. and county of the same city, and the inhabitants of the same parish of St. O. in the said county of L., the said common and public King's highway, so being ruinous and in decay as aforesaid, during all the time aforesaid, ought to have repaired and amended, and still of right ought to repair and amend, when, and as often as it should, or shall, or may be, necessary.

Against the
mayor and al-
dermen of G.,
for not repair-
ing a highway
which they are
bound to repair
by custom.

County of } That from time whereof the memory
(*to wit.*) } of man is not to the contrary, there was,
and has been, a certain ancient and common King's high-
way, leading from a certain place called Dunstan's Cell, in
the parish of all Saints, in the city of G., in the said county
of G., into a certain lane called Shire-lane, in the parish of
H., in the said county of G., for all the liege subjects of our
said Lord the King, and his predecessors, kings and queens
of this realm, by themselves, and with their horses, coaches,
carts, and carriages, to go, return, pass, repass, ride, and
labour, at their will and pleasure; and that a certain part
of the said King's highway, containing in length
yards, and in breadth feet, and lying in a certain
street called Bennet's-wall, in the parish of All Saints
aforesaid, in the said city of G. aforesaid, on, &c. and con-
tinually from thence afterwards, until the day of the taking
of this inquisition, at the said parish, in the said city
of G. and county of G., was, and yet is, miry, ruinous,
broken, dirty, and in great decay, for want of the due re-
paration and amendment of the same, so that the liege sub-
jects of our said Lord the King through the same way, by
themselves, and with their horses, coaches, carts, and car-
riages, could not during the time aforesaid, nor yet can go,
pass, repass, ride, and labour, without great danger of their
lives, and loss of their goods; to the great damage and

common nuisance of all the liege subjects of our said Lord the King through the same way going, returning, passing, repassing, riding, and labouring; and against the peace, &c. And that the mayor, aldermen, and burgesses of the city of G. aforesaid, by reason of ancient custom, whereof the memory of man is not to the contrary, for the passage of cattle and loaded carriages, in, upon, and through the said street called Bennet's-wall, being part and portion of the said highway leading from Dunstan's Cell aforesaid, in the said city of G., to the said parish of H., in the county of G. aforesaid, during all the time aforesaid, the common highway aforesaid, above particularly mentioned and described (so as aforesaid being in decay) have been accustomed to repair and amend, and of right ought to have repaired and amended, and still of right ought to repair and amend, when and as often as occasion hath required, and have not done it, &c. &c.

County of..... } That on, &c. there was, and from
(to wit.) } thence hitherto hath been, and still is, a
certain common and public bridge, commonly called High-bridge, otherwise Haigh-bridge, situate and being in the parish of B., in the county of N., in the common King's highway leading from the town of B., in the county aforesaid, towards and unto the town of..... in the same county, being a common highway for all the liege subjects of our said Lord the King on foot, and with their horses, coaches, carts, and other carriages, to go, return, pass, repass, ride, and labour; and that the said common and public bridge, on the said, &c. aforesaid, and continually from thence until the day of the taking of this inquisition, at the parish of B. aforesaid, in the county aforesaid, was, and yet is, ruinous, broken, dangerous, and in great decay for want of needful and necessary upholding, maintaining, amending, and repairing the same: so that the liege subjects of our said Lord the King, in, upon, and over the said bridge, on foot, and with horses, coaches, carts, and carriages, could not, and cannot pass and repass, ride, and

Against a county for suffering a public bridge to decay.

labour, without great danger of their lives, and loss of their goods; as they ought and were accustomed to do, and still of right ought to do; to the great damage and common nuisance of all the liege subjects of our said Lord the King, upon and over the said bridge, on foot, and with their horses, coaches, carts, and other carriages, about their necessary affairs and business, going, returning, passing, riding, and labouring; and against the peace of our said Lord the King, his crown, and dignity. And that the inhabitants of the county of N. aforesaid, of right have been, and still of right are bound to repair and amend the said common bridge, when and so often as it shall be necessary.

Against a private individual bound, *rations tenure*, to repair, for suffering a bridge to decay.

County of } That there is, and from time whereof
(*to wit.*) } the memory of man is not to the contrary, there hath been a certain public and common bridge in the parish of D., in the said county of B., over the river Wen, commonly called D. bridge, situate in the King's common highway leading from the town of D., in the said county of B., to the town of R. in the same county, for all the liege subjects of our said Lord the King, and his predecessors, to go, return, ride, and travel on horseback, and with their cattle, carts, and carriages, upon, along, and over, at their will and pleasure; and that the said public and common bridge, on, &c. and from thence continually afterwards, until the day of taking this inquisition, was, and yet is, ruinous, in decay, and out of repair, and insufficient, and without any parapet building, erection, or defence whatever on the sides thereof, to prevent horses and other cattle, carts, and carriages, going, returning, passing, and travelling upon, along, and over the said bridge, from falling from thence into the said river; so that the liege subjects of our said Lord the King could not, during all the time last above mentioned, nor yet can go, return, ride, and travel upon, along, and over the said bridge, without great danger of their lives, and loss of their horses and other cattle, carts, and carriages; to the great damage and common nuisance

of all the liege subjects of our said Lord the King going and returning, riding and travelling upon, along, and over the said bridge; and against the peace, &c. And that the Honourable C. M., commonly called Lord C. M., late of, &c. by reason of his tenure of certain lands,* situate, lying, and being at D. aforesaid, in the said county, ought, when and as often as it shall be necessary, to repair and amend the said bridge, and to make the same sufficient, safe, and secure, so that the liege subjects of our said Lord the King may pass, repass, ride, and travel upon, along, and over the said bridge, without danger of their lives, or loss of their horses and other cattle, carts, and carriages, &c.

County of } That from time whereof the memory
(to wit.) } of man is not to the contrary, there was
and still is a certain common and ancient watercourse, †
commonly called *Trout Beck*, leading from a certain place
called the Corporation Dam, in the parish of St. James the
less in the town of B., in the county of B. to a certain place
called the Falls, in the parish of St. A., in the suburbs
of the town of B. aforesaid, in the county of B. aforesaid,
used by all the liege subjects of our said Lord the King
and his predecessors for the time being, inhabiting and
residing in and about the said parishes of St. James the
less and St. A., to supply them with water for the use
and benefit of themselves and their families, and that a
certain part of the said common and ancient watercourse,
in the parish of St. A. aforesaid, in the suburbs of the said
town of B., in the county of B. aforesaid, containing in
length five hundred yards, and in breadth ten feet, on, &c.
and continually afterwards until the day of the taking of

Against a corporation of a town, for suffering a water-course which supplied the inhabitants with water, and which they were bound to cleanse, &c. to be filthy and unwholesome,

* This is sufficient allegation of the obligation of a private person to repair a bridge or road, *ratione tenuræ*. 2 Stark. 669. and the authorities there cited.

† If a water-course be stopped to the nuisance of the country, and none appear bound by prescription to clear it, those who have the right of fishing and the neighbouring towns, who have the immediate use, may be compelled to remove the obstruction. Hawk. b. 1. c. 75.

this inquisition, at, &c. aforesaid, was and still is foul, filled, and choaked up with mud, weeds, rubbish, dirt, and other filth, whereby the course and passage of the water, which should and ought, and before that time was used and accustomed to run and flow through the same watercourse, was, during all the time last aforesaid, and still is so greatly stopped and obstructed, that the liege subjects of our said Lord the King, inhabiting and residing in and about the said parish of St. A., during all the time last aforesaid were and still are not only deprived of the benefit and advantage of the water, which, during all the time last aforesaid should, and ought to have run and flowed, and still of right ought to run and flow through the said watercourse in its usual and accustomed manner, but also the said mud and other filth during all the time last aforesaid became and were and still are very offensive and nauseous, and the said water thereby greatly corrupted, and unwholesome to be drank by man, and by means thereof divers noisome and unwholesome smells on the said day of, in the year aforesaid, and on divers other days and times between that day and the day of the taking of this inquisition at the parish of St. A. aforesaid, did from thence arise, so that the air thereby was and still is greatly corrupted and infected, to the great damage and common nuisance of all the liege subjects of our said Lord the King, not only there residing and inhabiting, but also going, returning, passing, and repassing by the same, and against the peace of our said Lord the King, his crown and dignity. And that the mayor, bailiffs, and commonalty of the said town of B., in the said county of B. for the time being, the said common and ancient watercourse so as aforesaid being foul, choaked, and filled up as aforesaid, ought to empty, cleanse, and scour, and until the said grievance have, from time whereof the memory of man is not to the contrary, emptied, cleansed, and scoured, and have used and been accustomed to empty, cleanse, and scour, and still of right ought to empty, cleanse, and scour, when and as often as the same should or shall be necessary; yet the said mayor, bailiffs, and commonalty

have not emptied, cleansed, or scoured, nor caused to be emptied, cleansed, or scoured, the same common and ancient watercourse, so being foul, filled, and choaked up as aforesaid, as they ought to have done, and still of right ought to do, but during all the time last aforesaid, permitted and suffered, and still do permit and suffer the said watercourse to be foul, filled, and choaked up as aforesaid, for want of emptying, cleansing, and scouring the same.

PERJURY.*

County of } The jurors, &c. that A. B., late of In an infor-
 (to wit.) } A., &c. being a person of a wicked mation before
 and diabolical mind and disposition, and maliciously de- a magistrate of-
 a robbery.

* PERJURY by the common law has been defined to be a *willful false oath, by one who being lawfully required to depose the truth in any judicial proceedings swears absolutely in a matter material to the point in question, whether he be believed or not.* 1 Haw. c. 69. 3 Inst. 164.

It is necessary, to constitute the offence of perjury, that the false oath be taken with some degree of deliberation; for if upon the whole circumstances of the case it shall appear probable, that it was owing rather to the weakness, than perverseness of the party, as where it was occasioned by surprize, or inadvertency, or a mistake of the true state of the question, it cannot amount to voluntary and corrupt perjury. 5 Mod. Rep. 350. 10 Mod. Rep. 195. Salk. 513. 3 Inst. 163.

It seems to be clearly agreed, that all such false oaths, as are taken before those who are any ways intrusted with the administration of public justice, in relation to any matter before them, in debate, may be properly perjuries. 1 Hawk. c. 69. § 3.—while, not only no oath whatsoever taken before persons acting merely in a private capacity; but before those who take upon them to administer oaths of a public nature, without legal authority for their so doing; or before those who are legally authorized to administer some kinds of oaths, but not those which happen to be taken before them; or even before those who take upon them to administer justice by virtue of an authority seemingly colourable, but in truth unwarranted and merely void; can never amount to perjury. Ibid. As if a justice of the peace receive a voluntary oath upon any private transaction which does not concern the public; or if one justice receive an oath respecting any matter which is directed by statute to be before *two* justices; or if a mere *magistrate* (by charter of a borough) receive an oath on any occasion what is directed by statute to be administered by *justices*

vising and intending not only to deprive one C. D. of his good name, fame, and credit, and reputation, but also

of peace of counties; in every of these cases (which are of frequent occurrence from inadvertence) the matter is *coram non judice*, and perjury cannot be assigned.

It seems clear that the thing sworn ought to be some way material to the point in question; for if it be wholly foreign from the purpose, or altogether immaterial, and neither any way pertinent to the matter in question, nor tending to aggravate or extenuate the damages, nor likely to induce the jury to give credit to the substantial part of the evidence, it cannot amount to perjury.

And it is not necessary that it appear to what degree the point in which a man is perjured was material to the issue; for if it is but circumstantially material, it will be perjury. 1 *Ld. Raym.* 258.

SUBORNATION of perjury by the common law seems to be an offence in 'procuring a man to take a false oath, amounting to perjury, who actually takes such oath;' but it seemeth clear, that if the person incited to take such an oath do not actually take it, the person by whom he was so incited is not guilty of subornation of perjury; yet it is certain, that he is liable to be punished, nor only by fine, but also by corporal punishment. 1 *Hawk. c. 69.*

The punishment of perjury, and subornation of perjury by the common law, is restrained by the statute of the 5 *El.* hereafter following; that it shall not be less than is inflicted by that statute. But enough on this part of the subject, for as *Hawkins* says, it has been settled, that *justices of the peace have no jurisdiction over perjury at the common law*, 2 *Haw. c. 8.* except they sit also under a commission of oyer and terminer, as is the case in *Middlesex*; or by charter, from which they derive a similar authority, which is also the case in several instances.

In the case of *R. v. Bainton*, an indictment at the quarter sessions for perjury at the common law was quashed for want of jurisdiction. 2 *Str.* 1088. But it is otherwise of perjury by statute.

By 5 *Eliz. c. 9*, made perpetual by 29 *Eliz. c. 5*, and 21 *Jac. 1, c. 28*, all persons which shall corruptly procure any witness by letters, rewards, promises, or other sinister means, to commit wilful and corrupt perjury, in any matter depending in suit, by writ, action, bill, complaint, or information concerning lands, and hereditaments, goods, debts, or damages, in any of the queen's courts of record, or any leet; ancient demesne court, hundred court baron, or in the courts of stannary in *Devon* and *Cornwall*, or shall corruptly procure or suborn any witness sworn to testify in *perpetuam rei memoriam*; such offenders shall, being convicted, forfeit 40*l.* § 3.

And if any person shall, either by subornation, unlawful procurement or means of any other, or by their own act, wilfully and corruptly

falsely to charge the said C. D. with having feloniously assaulted and robbed him the said A. B. on the King's highway, with a wicked and malicious intention to cause and procure him the said C. D. to be unlawfully and wrongfully imprisoned, and forfeit his life for the same, on, &c. in his own proper person came before L. M., then and yet one of the justices of our said Lord the King, assigned to keep the peace in the county aforesaid, and also to hear and determine divers felonies, &c. and was then and there duly sworn, and took his corporal oath upon the Holy Gospel of God, before the said L. M. (he the said L. M. then and there having competent authority to administer the said oath to the said A. B. in that behalf,) and that the said A. B. being so sworn, and not having the fear of God before his eyes, but being moved and seduced by the instigation of the devil, then and there before the said L. M.

commit wilful perjury, in any of the courts before mentioned, on being examined, *ad perpetuum rei memoriam*, every person so offending, and being convicted, shall forfeit 20*l.* and have imprisonment six months, and the oath of such person shall not be received in any court of record, until the judgment be reversed by attainr or otherwise. And upon such reversal the party grieved to recover their damages, against such as did procure the judgment to be given against them, by action on the case.

And if the offender have not goods to the value of 20*l.* he shall be set on the pillory in some market place, by the sheriff, if without any city, or town corporate, and if within such city, &c. by the head officer, &c. and there have both his ears nailed, and be disabled for ever to be sworn in any of the courts of record aforesaid, until the judgment be reversed, and thereupon recover his damages.

And the one moiety of the money forfeited to be to the queen, and the other moiety to such person grieved by reason of the offence, that will sue for the same.

And the judge of the court where the perjury shall be, and the judges of *assize*, and *justices of the peace in sessions*, may inquire, hear, and determine thereof, by inquisition, presentment, bill, or information, or otherwise.

But it is said, that perjury and subornation in an action depending by *indictment* or criminal information, is not within this statute; but only in an action depending by *writ*, *action*, *bill*, *complaint*, or *information*. 3 Inst. 164.

upon his said oath, falsely, maliciously, wickedly, wilfully, and corruptly did say, depose, swear, and make affidavit, and give information in writing (among other things) as follows, that is to say, [*here set forth the perjury.*]

For perjury in
an affidavit of
the service of
notice to try a
traverse.

County of } That at the general quarter sessions
(*to wit.*) } of the peace of our said Lord the King,
holden at the Guildhall of the city of Westminster, in and
for the liberty of the dean and chapter of the collegiate
church of Saint Peter, Westminster, in the city, borough,
and town of W. in the county of M. on, &c. before, &c.
others their fellows, justices of the said Lord the King,
assigned to keep the peace of our said Lord the King in
and for the said liberty aforesaid, and also to hear and de-
termine divers felonies, trespasses, and other misdemeanors
committed in the said liberty, a certain indictment or
prosecution of J. S. was prosecuted and found against
W. J. for a certain assault therein alledged to have been
committed by the said W. J. on the said J. S. And the
jurors, &c. that afterwards and before the trial of the said
indictment, to wit, at the general quarter sessions of the
peace of our said Lord the King, holden at the Guildhall
of the city of Westminster, in and for the liberty of the
dean and chapter of the collegiate church of St. Peter,
Westminster, in the city, borough, and town of Westmin-
ster, in the county of Middlesex aforesaid, on, &c. before,
&c. and others their fellows, justices of our said Lord the
King, assigned to keep the peace of our said Lord the
King in and for the said liberty, and also to hear and de-
termine divers felonies, trespasses, and misdemeanors com-
mitted in the said liberty, A. B. late of, &c. came in his
proper person into the court of the same sessions, and then
and there did produce and exhibit to the said court a
certain affidavit in writing of him the said A. B. with a
certain notice thereunto annexed, which said notice was
and is as follows, to wit, "The King on the prosecution
of J. S. against W. J. for an assault. Mr. J. S. take notice
that I shall attend at the next quarter sessions of the peace

for the city and liberty of Westminster, to be holden at the Guildhall in King's street, Westminster aforesaid, on, &c. by nine o'clock in the forenoon of the same day, then and there to try my traverse upon the indictment preferred by you against me for an assault, dated, &c. Yours, &c. W. J. the above-named defendant. Witness, A. B." And which said affidavit was and is entitled as follows, to wit, City and liberty of Westminster aforesaid, to wit, The King on the prosecution of J. S. (meaning the said J. S.) against W. J. (meaning the said W. J.) for an assault, and the said A. B. then and there in the said court was duly sworn, and did take his corporal oath upon the Holy Gospel of God, concerning the truth of the matters contained in the said affidavit, the said court then and there having sufficient and competent power, &c. and to take and receive the said affidavit of him the said A. B. in that behalf. And the jurors, &c. do further present, that A. B. being so sworn as aforesaid, and not having, &c. but being moved and seduced, &c. and not regarding the laws and statutes of this realm, nor fearing the pains and penalties therein contained, and contriving and intending as far as in him lay to hinder and obstruct the due course of public justice, and to cause the said W. J. to be acquitted of the premises in the said indictment mentioned, then and there, to wit, on, &c. at the Guildhall of the city of Westminster, to wit, at the parish of, &c. in the county of Middlesex, in and by his affidavit aforesaid, upon his oath aforesaid, in the said court of the sessions last-aforesaid, the said court then and there having such power and authority as aforesaid, falsely and maliciously, wickedly, wilfully, and corruptly did say, depose and swear amongst other things as follows, that is to say, [*insert the parts of the affidavit with innuendoes,*] as by the said affidavit more fully appears, whereas in truth and in fact the said A. B. did not on, &c. serve the said J. S. with a true copy of the notice annexed to the said affidavit, by delivering the same to the said J. S. at his house in Bolton Mews, Berkeley Square, and whereas in truth and in fact the said A. B. did not on the day and year last-aforesaid, or at any other

time whatsoever, serve the said J. S. with a copy of any notice. And so, &c. the jurors aforesaid, upon their oath aforesaid, do say, that the said B. C. on, &c. at, &c. in the court of the sessions last-aforesaid, the said court then and there having such power, &c. by his own act and consent, and of his own most wicked and corrupt mind in manner and form aforesaid, did commit wilful and corrupt perjury, to the great displeasure, &c. in contempt, &c. to the evil, &c. and against the peace, &c.*

For perjury on 3 Eliz. c. 9. in an affidavit sworn before a commissioner in the country to increase costs against the defendant in a cause after verdict against him.†

County of } [Commencement as ante,] that before (to wit.) } and at the time of the being sworn and taking the corporal oath, as hereinafter mentioned, a certain cause in which Sir T. V. baronet was the plaintiff, and W. S. was the defendant, was depending in suit and variance in the courts of our Lord the King, before the King himself, by action concerning damages. And the jurors, &c. do further present, that H. C. late of, &c. gentleman, being an evil disposed person, and wickedly contriving and intending to aggrieve, injure, and prejudice the said W. S. the defendant in the aforesaid cause, and subject him to the payment of heavier costs, charges, and expences than he of right was or otherwise would be liable to, on, &c. at Tadcaster aforesaid, in the West Riding aforesaid, came in his proper person before J. C. gent. then and there being a commissioner duly

* After what has been advanced respecting perjury *at common law*, ante, p 423, in the Notes, to multiply precedents would be absurd. Respecting perjury, under the statute, too, very few may suffice, for it is observed by Hawkins, and after him by Blackstone, that "as every man is still punishable by indictment or information at common law, where he takes a false oath, which is looked upon as perjury at the common law, and as a prosecution upon the statute is more difficult than by indictment at the common law, it seems to be most advisable to prosecute such an offender at the common law," and not upon the statute; and this now is the usual course of proceeding. See 1 Hawk. c. 69. —4 Black. Com. 138.—Dalton, c. 70.

† From 2 Chit. C. L. p. 473.

authorized and empowered to take and receive affidavits in, touching, and concerning matters and proceeding of or in the court of our said Lord the King, before the King himself; and that the said H. C. then and there, to wit, on the same day and year aforesaid, at, &c. aforesaid, was duly sworn, and did then and there take his corporal oath upon the Holy Gospel of God, before the said J. C. (he the said J. C. then and there having sufficient and competent power and authority to administer the said oath to the said H. C. in that behalf,) and that the said H. C. being so sworn as aforesaid, did falsely, maliciously, and wickedly, and by his own act, consent, and agreement, wilfully, and corruptly then and there, before the said J. C. as such commissioner as aforesaid, depose, swear, and make affidavit in writing, of and concerning one H. C. then deceased, and of and concerning the attendance of the said H. C. deceased, in the said cause at the Lent assizes holden at the Castle of York, in and for the county of York, in the year of our Lord 1815, amongst other things as followeth, that is to say, that the said H. C. deceased, attended at the said assizes (meaning the said Lent assizes, holden at the Castle of York as aforesaid,) as attorney and material witness in this cause, (meaning the cause above last-mentioned) twelve whole days, and had no other business at the said assizes, as by the said affidavit affiled in the said court of the said Lord the King, before the King himself, to wit, at Westminster, in the county of Middlesex, amongst other things more fully appears; whereas in truth and in fact, he the said H. C. deceased, did attend at the said assizes as attorney for the plaintiff in a certain other cause entered to be tried, and tried at the said assizes, in which cause one L. M. was the plaintiff, and one G. H. was the defendant, and as attorney for the plaintiff in a certain other cause entered to be tried, and tried at the said assizes, in which cause one S. T. was the plaintiff, and one I. K. the defendant; and whereas in truth and in fact, the said H. C. deceased, did attend at the said assizes as attorney in divers, to wit, two other causes, at the said assizes; and whereas in truth and in fact, the said H. C.

Defendant's
using the affi-
davit.

deceased, in the said affidavit named, had other business at the said assizes. And the said H. C. the now defendant afterwards, to wit, on, &c. did of his own act, consent, and agreement, wilfully and corruptly produce and use, and cause to be produced and used the said affidavit upon the taxation of the costs of the said Sir T. V. in the said first mentioned cause, in order to obtain the judgment of the said court for more costs in the said cause for the said Sir T. V. against the said W. S. than the said Sir T. V. was entitled to and would otherwise have obtained, to wit, at Westminster aforesaid. And the jurors, &c. do farther present, that it became and was a material question upon the producing and using of the said affidavit in manner aforesaid, and also at the said time of swearing thereof as aforesaid, whether the said H. C. deceased, had other business at the said assizes besides the said first mentioned cause or not. And so the jurors aforesaid, now here sworn upon their oath aforesaid, do say, that the said H. C. the now defendant, on the said 30th day of October, in the fifty-sixth year aforesaid, at Tadcaster aforesaid, in the West Riding aforesaid, before the said J. C. being such commissioner as aforesaid, then and there having such authority as aforesaid, of his own most wicked, malicious, and corrupt mind and disposition, and by his own act, consent, and agreement in manner and form aforesaid, wilfully and corruptly did commit wilful and corrupt perjury, to the great damage of the said W. S. against the form of the statute in that case made and provided, and against the peace of our said Lord the King, his crown and dignity.

Indictment for
subornation
of perjury for
procuring a
woman to
swear a bastard
child to one
B. R.*

County of } That A. B. late of, &c. labourer, be-
(to wit.) } ing a wicked and evil disposed person,
and minding and intending great injury to one B. R. of

* From 2 Starkie, 529.

the said parish, and unjustly to cause and procure him to be put to great charges and expense of his monies, and to give security for the maintenance of a child, of which one A. U. spinster, was on, &c. pregnant, and which by the laws of this realm was likely to be born a bastard, and to be chargeable to the said parish, did on, &c. aforesaid, at, &c. aforesaid, unlawfully and wickedly solicit, instigate, persuade, and procure the said A. U. to go before one of the justices of our said Lord the King, assigned, &c. &c. and then and there take her corporal oath and swear, before such justice, that the said B. R. was the father of such child; and that she the said A. U. did, in consequence of such solicitation, instigation, and persuasion, on, &c. at, &c. aforesaid, before such justice charge the said B. R. with having lately, before that time, begotten upon the body of her the said A. U. a certain male child, which was afterwards born alive of the body of her the said A. U. a bastard; and that she the said A. U. was then and there before the said justice duly sworn, and did take her corporal oath upon the Holy Gospel of God, concerning the said premises (the said justice then and there having sufficient and competent power and authority to administer the said oath to the said A. U.) and that the said A. U. being so sworn as aforesaid, wickedly and maliciously devising and intending falsely and unjustly to charge and burthen the said B. R. with the maintenance and support of the said bastard child, and not only to draw him into great charges and expense of his monies, but also to bring him into great scandal, infamy, and disgrace, as a lewd and unchaste person, then and there upon her oath aforesaid, in a certain examination before the said justices, taken in writing in that behalf, did falsely, maliciously, wilfully, wickedly, and corruptly say, depose, and swear (amongst other things) in substance and to the effect following, that is to say, *[set out as much of the examination as can be proved to be false, and then proceed as follows.]* Whereas, in truth and in fact, he the said A. B., at the time when he so endeavoured to persuade, solicit, and instigate the said A. U. to make oath and swear as aforesaid,

then and there, to wit, on, &c. at, &c. well knew that the said B. R. would be put to great charges and expence of his monies, if she the said A. U. should swear as aforesaid; and whereas in truth and in fact, he the said A. B. at the said time when he so endeavoured to persuade, solicit, and instigate the said A. U. to make oath and swear as aforesaid, had no reasonable or probable cause whatsoever, to suspect or imagine that the said B. R. was the father of such child, but on the contrary thereof, the said A. B. was then and there informed by the said A. U. that he the said A. B. was the father of such child, of which she the said A. U. was so pregnant as aforesaid; and whereas in truth and in fact, she the said A. U. never told or informed him the said A. B. that the said B. R. was the father of such child; and whereas in truth and in fact he the said A. B. so wickedly and unlawfully endeavoured to persuade, solicit, and instigate the said A. U. to swear as aforesaid, in order that he the said A. B. might be exonerated, freed, and discharged from divers expenses which might accrue to him, as being the father of such child, after the same should be born of the body of her the said A. U. against the peace of our said Lord the King, his crown and dignity.

For subornation of perjury on trial of highway robbery where the prisoner set up an alibi.

County of } That heretofore, to wit, at the session
(to wit.) } of oyer and terminer of our Lord the King, holden at K. in the county of S. on, &c. before sir R. E. knight, one of the justices of his majesty's court of king's bench, and sir W. C. knight, then one of, &c. then justices of our said Lord the King, assigned, &c. [set out commission of oyer and terminer.] by the oath of H. V. esquire, &c. [the names of the grand jury,] good and lawful men of the county aforesaid, then and there sworn and charged to inquire for our said Lord the King, for the body of the county aforesaid, it was presented in manner and form following, to wit, [here set out the indictment.] Wherefore the sheriff of the county aforesaid was commanded not to omit, for any liberty in his bailiwick,

but to take the said C. D. to answer the premises, which indictment the above named justices of our said Lord the King, afterwards to wit, at the delivery of the goal of our said Lord the King, holden for the said county of, on the said, &c. before the aforesaid Sir R. E. knight, Sir W. C. knight, and others, their associates, then justices of our said Lord the King, assigned to deliver his said gaol of the prisoners therein, &c.; and afterwards, at the same delivery of the said gaol of our said Lord the King, held for the county aforesaid, at, &c. aforesaid, in the said county, on the said, &c. before the said justices of our said Lord the King, and other their associates aforesaid, came the said C. D. in the custody of T. C. esquire, sheriff of the county aforesaid, in whose custody in the said gaol for the cause aforesaid, he had been before committed, being brought to the bar here in his proper person, who was committed to the said sheriff, and forthwith concerning the premises in the said indictment above specified and charged on him as above, being asked in what manner he would be tried, the said J. G. said he was not guilty thereof, and concerning which, for good and ill, he did put himself upon his country, upon which said issue, such proceedings were had, that afterwards, to wit, on the said delivery of the said gaol of our said Lord the King, so held as aforesaid, a certain trial was held by a jury of the said county, taken between our said Lord the King, and the said C. D. as by the record thereof doth more fully appear, upon which said trial evidence was given on behalf of our said Lord the King, that the felony and robbery in the said indictment above specified, was committed by the said C. D. about half an hour after six in the afternoon, on the fourth day of June, in the eighth year, &c. And the jurors, &c. now here sworn and charged to enquire for our said Lord the King, for the body of the said county of upon their oath aforesaid, do further present, that A. B. late of, &c. being a person of wicked and evil mind and disposition, and devising and intending as much as in him lay, to prevent the due course of law and justice, and to cause and procure the said C. D. to be entirely acquitted of the said

felony and robbery charged on him, and by the said indictment to escape unpunished for the same, did before the said trial, to wit, on, &c. at, &c. unlawfully, and wickedly solicit, incite, and endeavour to persuade one E. F. to appear as a witness on the said trial so as aforesaid had, for and on the behalf of the said C. D. and on the said trial falsely to depose, say, and give in evidence upon his oath, to the jury of the county, aforesaid, that the said C. D. carried a suit of clothes on the fourth day of June last, (meaning the fourth day of June, in the eighth year, &c. the day on which the said felony and robbery in the said indictment above specified, were proved as aforesaid to have been committed) to the said C. D. at his lodgings (meaning the lodgings of him the said C. D.) at the Queen's Head in the Ship yard, (meaning Ship yard, in the county last aforesaid) between four and five (meaning, &c.) in the afternoon of the same day, and that he the said E. F. staid there an hour, and that the said C. D. was then sick, and did not buy his cloaths, whereas in truth and in fact the said E. F. did not go to the said C. D. on the fourth day of June, in the year last above mentioned, at any time in the same day, at the Queen's Head in S. yard, aforesaid, or at any other place whatsoever, on any account whatsoever, and whereas in truth and in fact, at the time when the said A. B. did so solicit, incite, and endeavour to persuade the said E. F. to give such evidence upon his oath as aforesaid, he the said A. B. well knew that he the said E. F. would not give his evidence according to the truth, and that the same evidence so to be given, was false, feigned, and altogether fictitious, to the evil example, &c. and against the peace, &c.*

PUBLIC OFFICERS.

Against a
person for re-
fusing to take
upon himself
the offices of
chief constable,
being duly

County of } The jurors, &c. that at the general
(to wit.) } quarter session of the peace, [here insert
the caption of the session] one A. B. of the parish of C.
within the hundred of O. in the county of M. aforesaid,
yeoman, then and long before being an inhabitant, and re-

* See 2 Chit. C. L. 478.

siding in the said parish of C., within the hundred and county aforesaid, and an able and proper person to execute the office of chief constable, within the said hundred, was in due manner elected by the justices above named, at the same session, to be one of the chief constables of the hundred aforesaid, in the room, and instead of one C. D. whereof he the said A. B. afterwards, to wit, on the same day, and in the year aforesaid, at the parish aforesaid, within the hundred and county aforesaid, had notice; nevertheless the said A. B., his duty in that behalf, not regarding, but contriving and intending wholly to neglect to serve the said office of chief constable, on the said day of in the year aforesaid, and continually afterwards, until the day of the taking of this inquisition, at the parish aforesaid, within the hundred and county aforesaid, unlawfully, wilfully, obstinately and contemptuously did neglect and refuse to take upon himself and execute the said office of chief constable,* within the said hundred of O. in the county aforesaid; in manifest contempt, and to the great delay of public justice, in contempt, &c. to the evil, &c. and against the peace, &c.

County of } That on, &c. at a court-leet of Sir T. L. knight and baronet, lord of the manor of H. in the said county of W., then held in and for the said manor of H., before P. Q., gentleman, then being steward of the said court of the said Sir T. L. lord of the said manor, T. O. late of, &c. within the manor aforesaid, in the county aforesaid, baker, according to the custom of the said manor, was duly nominated and elected by R. R., S. S., &c. [*the names of the jurors,*] the jury then and there duly sworn at the said court-leet, as well for our

For refusing to take the oath of constable of a manor, to which office he was duly elected at a court-leet, and for refusing to be sworn into office, after a certificate from the steward to two justices, and notice so to do.

* An indictment lies against a person elected to the office of high, or petty, constable for refusing to execute its duties, 2 Stra. 980. So also against overseers for not taking upon themselves that office, 1 Stra. 101. and on the same principle, all other ministerial offices which the party is liable to exercise, 4 T. R. 778. *R. v. Chapple*, 3 Campb. 91. The defendant may, however, in many cases, show ground of exemption by which his liability is discharged. See *ante*, p. 62.

said Lord the King, as for the said lord of the said manor, according to the custom of the said manor, one of the constables of the said manor of H., for the year then next ensuing, (he the said T. O. then being an inhabitant and resident of and within the said manor, and a fit person to be so nominated and elected, and a person liable to be nominated and elected to the said office,) to wit, at, &c.; and that afterwards, to wit, on the same, &c. at the parish aforesaid, in the manor and county aforesaid, the said T. O. had notice from the said P. Q. as being so steward as aforesaid, of such his nomination and election as aforesaid; and that afterwards, to wit, on, &c. at, &c. aforesaid, in the manor and county aforesaid, the said P. Q. then being such steward as aforesaid, did certify under his hand and seal to Sir A. H. baronet, and the Rev. C. S. clerk, two of his majesty's justices of the peace, assigned, &c. in said county of W. in petty sessions assembled at K. in the said county of W., that the said T. O. had according to the custom of the said manor been appointed at a court-leet, held in and for the said manor of H., on the said, &c. constable of the said manor of H., whereupon the said Sir A. H. baronet, and C. S. clerk, the justices aforesaid, afterwards, to wit, on the said, &c. at, &c. aforesaid, did make and issue a certain summons under their hands and seals directed to the constable of H. aforesaid, for that time being, thereby requiring him the said constable, forthwith to summon the said T. O. to appear before them the said Sir A. H. baronet, and C. S. clerk, being such justices as aforesaid, at the session-house in K. aforesaid, on, &c. by one of the clock in the afternoon of the same day, to take the oath of office of constable for the said manor of H., so being nominated and elected for and to that office as aforesaid; and the jurors, &c. do further present, that the said T. O. afterwards, to wit, on the said, &c. at, &c. aforesaid, was duly summoned by X. Y. then being such constable of the manor of H. aforesaid, to appear before the said Sir A. H. baronet, and C. S. clerk, being such justices as aforesaid, at the said session house in K. aforesaid, on, &c. aforesaid, by one of the clock in the afternoon of that day, to take the

oath of office aforesaid, according to the tenor of the said summons, and that although the said T. O. personally appeared before the said Sir A. H. baronet, and C. S. clerk, on the day and at the place in that behalf aforesaid, according to the summons aforesaid, and was then and there required by the said Sir A. H. baronet, and C. S. clerk, to take the said oath of office, of constable of and for the said manor of H., according to the nomination and election aforesaid, yet the said T. O. then and there, to wit, on the said, &c. at, &c. (although often-duly requested so to do,) unlawfully, wilfully, obstinately, and contemptuously did refuse and deny, and still doth refuse and deny, to take the said oath of office, and to be duly sworn in the said office of constable, of and for the said manor of H., for the year next ensuing, and to take upon him the said office of constable, contrary to his duty in that behalf, in contempt, &c. to the great hindrance of justice, and against the peace, &c.

County of } The jurors, &c. that on the day For refusing
(to wit.) } of in the year of the reign, to serve the
&c. at the parish of A. in the county of M., B. C. esq. office of
and D. E. esq. then and yet being two of the justices of overseer.
our said Lord the King, assigned to keep the peace of our
said Lord the King, in the said county of M., and also to
hear and determine divers felonies, trespasses, and other
misdemeanours committed in the same county (one of them
then being of the quorum) and both dwelling near the said
parish of A., in the county of M. aforesaid, did under their
hands and seals, nominate and appoint F. G. then being a
substantial householder in the said parish of A. in the county
aforesaid, to be overseers of the poor of the said parish, for
the year then ensuing, according to the form of the statute
in such case made and provided. And that afterwards, to
wit, on the day of in the said year of
the reign, &c. at the parish aforesaid, in the county afore-
said, he the said F. G. had due notice of the said nomina-
tion and appointment, and was duly and legally served
therewith; yet he the said F. G., of the parish aforesaid,

in the county aforesaid, yeoman, on the said day of in the year aforesaid, and continually afterwards, until the day of the taking of this inquisition, during all which time he the said F. G. was and continued, and yet is an inhabitant and householder within the same parish, in the county aforesaid, at the parish aforesaid, in the county aforesaid, unlawfully, obstinately, and contemptuously did, and yet doth neglect and refuse to take upon himself the execution of the said office of overseer of the poor of the said parish of A. in the said county of M., to which he was so nominated and appointed as aforesaid, or to intermeddle or act therein; in contempt of our said Lord the King and his laws, to the evil and pernicious example of all others in the like case offending, against the form of the statute in such case made and provided, and against the peace of our said Lord the King, his crown and dignity,

Against a constable for neglecting to execute a justice's warrant for the apprehension of a person. } *County of* } That heretofore, to wit, on, &c. W. (to wit.) } N. esquire, then and still being one of the justices assigned, &c. did make a certain warrant in writing, under his hand and seal, bearing date, on, &c. directed to the constable of the parish of G. in the county of D., thereby in his majesty's name charging and commanding the said constables, that, &c. [*here set forth the warrant*] which said warrant, afterwards to wit, on, &c. at, &c. aforesaid, was duly indorsed for execution, by and in the name of X. Y. esquire, then being mayor, and one of his majesty's justices of the peace, in and for the borough of D. in the said county of D. and which said warrant so indorsed, afterwards to wit, on, &c. last aforesaid, in the county aforesaid, was delivered, to T. O. late of, &c. then and still being constable of the said parish of G. in the county aforesaid, in due form of law to be executed, and the said T. O. was then and there required to execute the same, by bringing the body of the said E. R. before the said W. N. at the time and place, and for the purpose in the said warrant mentioned. And the jurors, &c. do further present, that although the said T. O. could and might and ought to have executed the said warrant accordingly; yet

the said T. O. so being constable of the said township of G. in the county of D. aforesaid, not regarding the duty of his said office,* did not, nor would execute the said warrant as aforesaid, or otherwise, howsoever, but unlawfully, wilfully, obstinately, and contemptuously neglected and refused so to do, and therein failed and made default, to the great hindrance of public justice, in contempt, &c. to the evil, &c. and against the peace, &c.

Liberty of in
the County of
(to wit.) } The jurors, &c. that E. H. late
of the parish of St. P. within the
liberty of St. A. in the county of
H. single woman, on the day of in the
year, &c. at the parish aforesaid, within the liberty afore-
said, in the county aforesaid, in her proper person, came
before J. K. esq. then being one of the justices of our said
Lord the King, assigned to keep the peace of our said
Lord the King, within the liberty aforesaid, in the county
aforesaid, and also to hear and determine divers felonies,
trespasses, and other misdeameanours committed within the
same liberty, and then and there the said E. H. before the
said J. K. the justice aforesaid, did swear and give her
examination in writing, to the purport and effect following,
(that is to say) [*here recite the material part of the examina-*
tion,] as in and by the said examination, relation being
thereunto had, may and doth more fully and at large appear.
And that he the said J. K. the justice aforesaid, did there-
upon afterwards, to wit, on the said day of in the
. . . . year aforesaid, within the said liberty, in the county
aforesaid, in due form at law, make and issue a certain
warrant, under his hand and seal, bearing date the same
day and year aforesaid, directed to all constables and others
his majesty's officers of the peace for the said liberty, and
also particularly directed to P. Q. specially appointed to
execute the said warrant, thereby and therein commanding
them and every of them, upon sight thereof, to take, &c.

Against a con-
stable for re-
fusing to aid
and assist
another when
called on to
apprehend a
person.

* The 33 Geo. 3. gives a summary jurisdiction to justices to punish parish officers for neglect of duty, but that remedy does not supersede the ancient one by indictment. See *ante*, p. 125.

[*here go on with the warrant*] which said warrant was then and there delivered by the said J. K. the justice aforesaid, to the said P. Q. one of the constables of the said parish of St. P. within the liberty aforesaid, in the county aforesaid, specially appointed to execute the same, as aforesaid, and that he the said P. Q. afterwards, to wit, on the day of in the year aforesaid, at the parish of St. P. within the liberty aforesaid, in the county aforesaid, did apply to T. B. one of the constables of the said last mentioned parish, for assistance in order to apprehend and take the said Y. Z., in pursuance of, and according to the said warrant so as aforesaid, directed to him the said P. Q., and also, &c. constables of the said liberty, and did then and there shew the said warrant to the said T. B. and in the name of our said Lord the King, did then and there require and command the said T. B. to aid and assist him the said P. Q. in the apprehending and taking of the said Y. Z. in said warrant named, pursuant to the said warrant. And the jurors, &c. that the said T. B. late of the said parish of St. P. within the liberty of St. A. in the county of H. aforesaid, yeoman, so as aforesaid, being one of the constables of the said parish of St. P., and well knowing the premises aforesaid, but the duty of his said office in that behalf, in no wise regarding, afterwards, that is to say, on the day of in the year aforesaid, at the parish last aforesaid, within the said liberty, in the county aforesaid, unlawfully, wilfully, obstinately, and contemptuously did neglect and refuse to aid and assist the said P. Q. in the apprehending and taking of him the said Y. Z., pursuant to the said warrant, as he the said T. B., by virtue of his said office of constable according to law, should and ought to have done, to the great hindrance of public justice, in manifest contempt of our said Lord the King and his law, to the evil, &c. and against the peace, &c. And the jurors, &c. that on the said day of in the said year, &c. P. Q. one of the constables of the said parish of St. P. within the said liberty of St. A. in the county of H. aforesaid, at the parish of St. P. within the liberty and county afore-

said, had in his custody a certain warrant then lately before, in due form of law made and issued by the said J. K. esq. and then one of the justices of our said Lord the King, assigned to keep the peace, in the said liberty, in the said county of H., and also to hear and determine divers felonies, &c. committed within the same liberty, under his hand and seal, bearing date the day and year aforesaid, and directed to, &c. [*Here go on with the direction and purport of the warrant as in first count, and then*] and that he the said P. Q. afterwards, to wit, on the day and in the year last aforesaid, at the said parish of St. P. within the liberty and county aforesaid, did shew the said warrant to the said T. B. one of the constables of the parish last aforesaid, and did then and there, in the name of our said Lord the King, command and require the said T. B. to aid and assist him the said P. Q. in the apprehending and taking of the said Y. Z. in the said warrant named, nevertheless the said T. B. late of the parish last aforesaid, within the said liberty, in the county aforesaid, yeoman, to aid and assist the said P. Q. in that behalf, then and there unlawfully, wilfully, obstinately, and contemptuously did neglect and refuse, to the great hindrance of public justice, in manifest contempt, &c. to the evil, &c. and against the peace, &c.

County of..... } The jurors, &c. that on the..... Against a
(to wit.) } day of..... in the..... year, &c. headborough
one A. B. at the parish of C. in the county of M., was for refusing to
brought before O. D. esquire, then and yet one of the convey a
justices of our said Lord the King aforesaid, to keep the person to gaol
peace in the county aforesaid, and also to hear and deter- committed by
mine divers felonies, trespasses, and other misdemeanours, a justice of the
committed in the same county, and the said A. B., was peace.
then and there charged before the said O. D. the said justice
aforesaid, upon the oath of one F. G., for violently assaulting and beating her, against the peace of our said Lord the King, and thereupon and because the said A. B. did then and there refuse to find sureties before the said O. D. the justice aforesaid, for his personal appearance at the then next general quarter session of the peace, to be holden in

and for the said county, to answer the said offence, he the said O. D. did then and there in due form of law make a certain warrant under his hand and seal, bearing date the day and year aforesaid, directed to the, &c. thereby commanding the said &c. that he should receive, &c. [*here recite the material part of the commitment,*] which said warrant afterwards, to wit, on the said day of in the year aforesaid, at the parish aforesaid, in the county aforesaid, was delivered to one L. M., then being one of the headboroughs of the said parish, then and there having the said A. B. in his custody for the said cause, and the said L. M. was then and there required and commanded by the said O. D. the justice aforesaid, immediately to convey the said A. B. to the said gaol, and to deliver the said A. B. to the keeper thereof, together with the said warrant. Nevertheless the said L. M. late of the parish aforesaid, in the county aforesaid, yeoman, the duty of his said office of headborough, in no wise regarding, afterwards to wit, on the said day of in the year aforesaid, at the parish aforesaid, in the county aforesaid, unlawfully, obstinately, and contemptuously, did neglect and refuse to convey the said A. B. to the said gaol, and to deliver him, together with the said warrant to the keeper thereof, as he the said L. M., by virtue of his said office according to law, should and ought to have done, to the great hindrance of public justice, in manifest contempt of our said Lord the King and his laws, to the evil, &c. and against the peace, &c.

Against the churchwardens of a parish for not sending to coroner to take an inquisition on the body of a man who came to an unnatural death.

County of } The jurors, &c. that on the
(to wit.) } day of in the year of the
reign, &c. one S. F. at the parish of F. in the county of S,
fell into a copper of boiling soap, by means whereof he the
said S. F. was mortally scalded, and then and there languished,
and languishing, did live until the day of
the same month, of on which said day of
. in the year aforesaid, the said S. F. of the said
scalding, at the parish aforesaid in the county aforesaid,
died, and that the body of S. F. then and there lay dead.

And the jurors, &c. that A. B. late of the parish of F. aforesaid, in the said county of S. yeoman, C. D. late of the same place, yeoman, then being the churchwardens of the said parish of F., in the said county of S., but the duty of their said office in no wise regarding, afterwards, to wit, from the said day of until the day of the said month of and until after the burial of the said S. F., contrary to the laws and customs of this realm, unlawfully, obstinately, and contemptuously did neglect to send and give notice to R. P. gentleman, coroner of our said Lord the King, of and for the said county of S., of the said death of him the said S. F., in order to his taking an inquisition for our said Lord the King, on the body of the said S. F., in that behalf and which according to the duty of their said office as such churchwardens, they ought to have done, by reason and means whereof, the body of the said S. F. was on the said day of in the year aforesaid, at the parish aforesaid, in the county aforesaid, buried without any inquisition having been taken for our said Lord the King, when, where, how, and in what manner the said S. F. came by his death, to the great and manifest hindrance of public justice, in contempt of our said Lord the King and his laws, to the evil and pernicious example of all others in the like case offending, and against the peace of our said Lord the King, his crown and dignity.

County of } That on the day of &c. Against a coroner for refusing to take an inquisition.
 (to wit.) } in the year of the reign of our
 Sovereign Lord George, &c. &c. one A. B., at in
 the said county of was drowned and suffocated in a
 certain pond, and of that drowning and suffocating then
 and there died; and that the body of the said A. B. at
 aforesaid, in the county aforesaid, lay dead, of
 which one C. D. late of in the county aforesaid,
 gentleman, afterwards, to wit, on the said day of
 in the year aforesaid, then being one of the coroners
 of our said Lord the King for the county aforesaid, at
 aforesaid, had notice; nevertheless the said C. D.
 the duty of his office in that behalf not regarding, after-

wards to wit, on the said day of in the year aforesaid, at aforesaid in the county aforesaid, to execute his office of and concerning the premises, and to take inquisition for our said Lord the King, according to the laws and custom of the realm, unlawfully, obstinately, and contemptuously, did neglect and refuse, and that the said C. D. no inquisition in that behalf as yet hath taken, to the great hindrance of justice, in contempt of our said Lord the King and his laws, and against the peace, &c.

Against a bailiff for insert-
his own name
in a warrant
directed to
another bailiff
and arresting
and imprison-
ing the prose-
cutor, W. O. J.

County of } That, on, &c. at, &c. P. Q. esquire,
(*to wit.*) } then being sheriff of the said county of N., by virtue of his said majesty's writ, to him the said sheriff for that purpose directed, duly made his the said sheriff's warrant in writing under his hand and seal, directed to one H. N., his the said sheriff's bailiff; by which said warrant he the said sheriff commanded the said H. N. that of the goods and chattels, &c. [*here recite the warrant.*] And the jurors, &c. do further present, that T. M. late of, &c. wickedly, unlawfully, and maliciously, devising, contriving, and intending, as much as in him lay, to oppress, injure, and impoverish the said W. O. J., in the said warrant named, having the said warrant in the custody and possession of him the said T. M., he the said T. M. unlawfully, knowingly, deceitfully, and falsely, after the making and issuing of the said warrant, to wit, on the said, &c. at, &c. aforesaid, did alter, and cause and procure to be altered, the said warrant, by then and there unlawfully, knowingly, deceitfully and falsely, erasing, expunging, and removing from the same, the name of the said H. N., and in place, lieu, and in stead thereof, unlawfully, knowingly, deceitfully, and falsely inserting, and forging the name of him the said T. M., in the direction of the said warrant of the said sheriff, so as to make the said warrant purport to be a warrant directed to the said T. M. for execution thereof, and with an intent greatly to injure, aggrieve, and oppress, the said W. O. J., and which said warrant so unlawfully, knowingly, deceitfully, and falsely altered, is as

follows, that is to say, [*here set out the warrant in its altered state.*] And the jurors, &c. do further present, that the said T. M. afterwards, to wit, on the said, &c. at, &c. aforesaid, the said warrant so altered as aforesaid, did unlawfully, subtly, knowingly, falsely, and deceitfully, utter and publish as the true and real warrant of the said sheriff, with an intent greatly to oppress, aggrieve and injure the said W. O. J., and also under colour and pretence of which said warrant so altered as aforesaid, he the said T. M. afterwards, to wit, on the said, &c. with force and arms, at, &c. aforesaid, did wrongfully, unjustly, and injuriously, against the will of the said W. O. J., and contrary to the laws of this realm, take, arrest and imprison the said W. O. J. by his body, and kept and detained him so imprisoned there for a long space of time, to wit, for the space of twenty hours, then next ensuing, against the will of him the said W. O. J., and contrary to the laws of this realm, whereby the said W. O. J. during all that time not only underwent and suffered great pain, and anguish of body and mind, but was also prevented and hindered from following and transacting his lawful affairs and business; and the said W. O. J. was also put to sundry great charges and expences, amounting in the whole to a large sum of money, to wit, the sum of seven pounds and ten shillings, in and about the procuring and obtaining his release and discharge from his said imprisonment; and other wrongs to the said W. O. J. then and there did to the great damage of the said W. O. J., and against the peace, &c.

County of } The jurors, &c. that on, &c. A. B. Against a
 (to wit.) } was committed to the common gaol of ^{gaoler for ex-} _{tortion.}
 the county of M. aforesaid, by virtue of a certain warrant of commitment duly made by C. D. esquire, then and yet one of the justices of our said Lord the King, assigned, &c. under his hand and seal, bearing date, &c. and directed to the keeper of the said gaol, by which said warrant of commitment the said keeper was required to receive into his custody the said A. B. he being charged, &c. [*recite the*

charge in the commitment,] and that G. H. keeper of the said gaol, afterwards, to wit, on the day and year aforesaid, at the parish aforesaid, in the county aforesaid, did receive the said A. B. into his custody in the said gaol there situate for the cause aforesaid, and him the said A. B. from the said day of in the year aforesaid, until, &c. in the same year, in his custody in the said gaol, by virtue of the said warrant of commitment had, and that the said G. H. late of, &c. being such keeper of the said common gaol of the said county of M. as aforesaid, but the duty of his office in that behalf and the laws of this realm in no wise regarding afterwards, (that is to say,) on the said day of in the year aforesaid, at the parish of, &c. aforesaid, in the county aforesaid, unlawfully, and unjustly did take a reward of the said A. B. to do his office, (that is to say,) he the said G. H. did then and there by colour of his said office, unlawfully, and unjustly demand, extort, receive, and take of and from the said A. B. the sum of 12s. as and for his fee, for pretended ease and favour towards the said A. B. in the said gaol, during the time aforesaid, whereas in truth and in fact the said G. H. was not entitled to the said sum of 12s. or any sum of money whatsoever, from him the said A. B. for doing his said office, in contempt, &c. to the damage, &c. against the statute, &c. and against the peace, &c. And the jurors, &c. that the said G. H. being keeper of the common gaol of the said county of M. as aforesaid, on, &c. at, &c. in the said gaol there situate, did receive one A. B. by virtue of a certain warrant of commitment duly made by the said, &c. in that behalf, and he the said G. H. the said A. B. from the day and year last aforesaid, until, &c. in his custody in the said gaol there had. And the jurors, &c. that the said G. H. afterwards, to wit, on the said day of in the year aforesaid, at the parish of, &c. in the county aforesaid, unlawfully, and unjustly, by colour of his said office, did demand, extort, receive, and take of and from the said A. B. the sum of 12s. as and for his ease and favour towards the said A. B. in the said gaol, during the time aforesaid, whereas in truth and in fact there was no

fee or sum of money whatsoever due from the said A. B. to the said G. H. in that behalf, to the great damage, &c. in contempt, &c. and against the peace, &c.

County of } That O. B. late of, &c. labourer, by
 (to wit). } colour of being collector and receiver of
 the monies and tolls at a certain turnpike or toll-bar gate, situate in, &c. aforesaid, on, &c. with force and arms, at, &c. aforesaid, unlawfully, extorsively and deceitfully, and of his own wrong extorted, exacted, asked, demanded, and received of one A. Z. husbandman, the sum of one shilling and sixpence, for a cart and two horses, that is to say, six pence for a cart, and sixpence for each of two horses then and there drawing the said cart belonging to him the said A. Z., for permitting the same to pass through the said turnpike or toll-bar gate, under colour and pretence that the said A. Z. had neglected to take out and obtain from him the said O. B. such a ticket or certificate of composition, and exemption from toll, as is permitted by a certain act of parliament passed in the thirty-sixth year of the reign of our said Lord the King, intituled, [*here insert the title of the act,*] whereas in truth and in fact he the said A. Z. had taken and obtained from the said O. B., and was then in possession of, such ticket or certificate of composition and exemption as aforesaid, signed with the name of the said O. B. and dated, [*here set out the date to show that it was within the terms of the act,*] as in the said mentioned act as specified, to the evil example, &c. and against the peace, &c.

* Two observations necessarily arise out of this precedent.

1st. That stat. 3 Edw. 1. c. 26. was only an assurance of the common law, and therefore all public officers, properly so called, whether mentioned in that statute, or not, seem to be subject to indictment for extortion. Dalt. c. 41. 1 Russel, C. & M. 223.

2d. That a recent case has decided that the question of exempt, or not exempt, from toll of a turnpike gate cannot be tried on an indictment of a bar-keeper for extortion; the general right to take not having been denied, nor the ground of exemption notified. *Rea v. Hamly*, 4 Campb. 379.

Against a constable for extorting money from a person apprehended by him on a bench-warrant, to let him go without taking him before a justice.

County of } The jurors of our Lord the King,
(*to wit.*) } that A. B. late of in the county
of yeoman, on the day of in the
year of our Sovereign Lord George the Third, &c. then
being one of the constables of the same parish, at the parish
aforesaid, in the county aforesaid, did take and arrest one
G. H. labourer, under colour of a certain warrant commonly
called a bench-warrant, which he the said A. B. then and
there had to apprehend the said G. H. to answer to a
certain trespass and assault of which the said G. H. then
stood indicted, as the said A. B. then and there alleged
and pretended, and the said A. B. him the said G. H., then
and there had in his custody, and that the said A. B. after-
wards, to wit, the same day and year at the parish afore-
said, in the county aforesaid, unlawfully, corruptly, deceit-
fully, and extorsively, for wicked gainsake, and contrary to
the duties of his office, did extort, receive, and take of the
said G. H., the sum of ten shillings of lawful money of
Great Britain, for discharging the said G. H. out of the
custody of him the said A. B., without conveying him
before any justice of the peace for the said county, to
answer to the said trespass and assault whereof he was sup-
posed to stand indicted as aforesaid, in contempt of our
said Lord the King and his laws, to the evil example, &c.
and against the peace, &c.

Information against a justice for causing a person to be imprisoned for want of bail, in a matter not cognizable before him.

County of } That on, &c. at, &c. P. Q. esquire,
(*to wit.*) } then and there being one of the justices
of the said Lord the King, assigned, &c.* did make his
certain warrant in writing under his hand and seal, di-
rected to all constables and other peace officers of the same

* Although it may be almost unnecessary to observe, that other remedies as well civil, as criminal, viz. actions, as well as informations, are perhaps more commonly resorted to for the punishment of misbehaviour in public officers of superior description as justices of the peace, it cannot be irrelevant to introduce, sparingly indeed, precedents of indictments for similar offences.

county, and especially to C. B. for that purpose, thereby requiring them, and every of them, upon sight thereof, to take, &c. [*here set forth the warrant,*] which said warrant, afterwards, to wit, on, &c. at, &c. aforesaid, was delivered to the said C. B. to be executed in due form of law. And the jurors, &c. that on, &c. at, &c. one H. H. of D. in the said county of S. labourer, was apprehended and taken into custody, by the said C. B. (who then, and for a long time both before and afterwards, was one of the constables of D. aforesaid,) and by the said A. B. carried and conveyed in custody before the said P. Q. being such justice as aforesaid, at his then dwelling-house, situate and being at D. &c. and there, to wit, at D. aforesaid, examined by the said P. Q. so being such justice as aforesaid, touching and concerning a certain misdemeanor, supposed to have been then lately committed and done by the said H. H. (by unlawfully committing a trespass upon the premises of one X. Y. of D. aforesaid, and the said H. H. was then and there charged and accused before the said P. Q. being such justice as aforesaid, with having committed the said supposed offence : and the jurors aforesaid, &c. that the said P. Q. being such justice as aforesaid, wrongfully, unjustly, wickedly, and maliciously contriving and intending to hurt, injure, oppress, aggrieve, and prejudice the said H. H. in this respect, and to put him to great charges and expences of his money, and to cause him to undergo and suffer great pain, torture, and anguish of body and mind, and wholly to ruin him, on the said, &c. at, &c. aforesaid, after the said examination of the said H. H. of, upon, and concerning the premises aforesaid, ordered and directed, that the said H. H. should enter into a certain recognizance with two sureties for his personal appearance at the next general quarter session of the peace of our said Lord the King, to be held in and for the said county of to answer the said charge : and because he the said H. H. did not, and could not conveniently, find such sureties as aforesaid, he the said P. Q. so being such justice as aforesaid, further wrongfully, unjustly, wickedly, and maliciously contriving and intending to hurt, injure, oppress, aggrieve, and pre-

judice the said H. H. as aforesaid, then and there, to wit, on the said, &c. at, &c. aforesaid, wrongfully, unjustly, and maliciously, against the will of the said H. H. and contrary to the laws of this realm, (by virtue and colour of a certain warrant of commitment for that purpose made, under the hand and seal of him the said P. Q. being such justice as aforesaid,) committed the said H. H. a prisoner, to a certain prison, called the house of correction, situate at, &c. aforesaid, to be there safely kept, until he the said H. H. should enter into such recognizance with sureties as aforesaid, and until he should be further examined concerning the premises; and then and there ordered, directed, and commanded the then keeper of the said prison, to keep the said H. H. under close confinement in the said prison, until the said then next general quarter session of the peace for the said county of or until he should enter into such recognizance with sureties as aforesaid. And the jurors, &c. that the said P. Q. being such justice as aforesaid, by virtue and under colour of the said warrant, order, and direction, did, on the said, &c. and for a long time, to wit, for the space of forty-seven days then next following, at, &c. aforesaid, wrongfully, wickedly, maliciously, and unjustly cause and procure the said H. H. to be closely confined and imprisoned in the said prison, to wit, at, &c. aforesaid, whereby the said H. H. during all that time, underwent and suffered great pain, torture, hardship, and anguish, both of body and mind, and was deprived of his liberty, and was put to great charges and expences, in and about the obtaining his release and discharge from such commitment and imprisonment, contrary to the laws and customs of this realm, in great violation of the true constitution of this kingdom, and of the liberties, rights, and franchises of the subjects thereof, to the evil and pernicious example, &c. and against the peace, &c.

Indictment
against justices
for partiality
in refusing to
grant a licence.

County of }
(to wit.) }

That B. B. and G. I. late of, &c. on, &c. and long before, were and continually from thence hitherto have been, and still are justices

of our said Lord the King, assigned, &c. &c. and acting in a certain division, in the said county of N. commonly called the N. division, in which said division, the parish of M. in the said county of N. then was and now is situate. And the, &c. do further present, that on the said, &c. aforesaid, at M. in the said county of N. a general meeting of the justices of our said Lord the King, assigned, &c. acting in and for the said division of the said county, in which the parish of M. then was and is situate as aforesaid, was duly summoned for the purpose of licensing persons to keep common inns and alehouses, within the said division, and that the same was duly and lawfully holden in pursuance of such summons, and according to the form of the statute in such case made and provided, by and before the said B. B. and G. I. acting for the division and county aforesaid, and as such justices as aforesaid, none others of the justices of the county of N. aforesaid being then and there present. And the jurors aforesaid, upon their oath aforesaid, do further present, that one P. R. being a person of good fame and of sober life and conversation, and being then and there desirous of keeping a common inn or alehouse, in a certain house, situate and being within the said parish of M. in the said county of N. and within the division aforesaid, commonly called and known by the name or sign of the Red Lion, in which said house the trade and business of a victualler was then, and had been during four successive years continually carried on, under, and by virtue of certain licences before then, for that purpose duly granted unto the said P. R. And he the said P. R. did then and there at the said general meeting apply to the said B. B. and G. I. justices as aforesaid, to grant to him the said P. R. a licence to keep a common inn or alehouse in the said house so called and known by the name or sign of the Red Lion as aforesaid, for the space of one year, to commence on, &c. aforesaid, and did then and there, at the said general meeting, being thereunto requested, produce to and before the said justices, so then and there met for the purpose of granting such licences as

aforesaid, a certificate under the hands of the Rev. C. L. clerk, minister of the church of the said parish of M., of A. B., churchwarden of the said church and parish of M., and also of C. D. and E. F. overseers of the poor of the said parish of M., and of twelve then reputable and substantial householders, and inhabitants of the said parish of M. in which the said house for which such licence was so applied for by the said P. R. as aforesaid, was and is so situate as aforesaid, of his the said P. R.'s being a person of good fame and sober life and conversation, and the said P. R. was then and there ready to enter into a recognizance, with sufficient sureties for the maintenance of good order and rule within the same house, pursuant to the statute in such case made and provided. And the jurors, &c. do further present, that the said B. B. and G. I. so being such justices as aforesaid, and acting as aforesaid, not regarding their duty as such justices, but wrongfully and maliciously and corruptly intending to oppress, injure, hurt, and aggrieve the said P. R. by colour of their said offices of justices of the peace as aforesaid, did then and there at the said meeting so held, on the said, &c. at, &c. aforesaid, corruptly, maliciously, and unjustly,* and without any lawful or reasonable cause whatsoever, and from motives of private partiality and favour unto and towards one X. Y. the then keeper of a certain other alehouse, situate in the division aforesaid, that is to say, a certain common ale or victualling house, then kept by the said X. Y. situate in, &c. aforesaid, in the said division, commonly called and known by the name or sign of the B. Arms, refuse to grant to the said P. R. the said licence, so by him applied for as aforesaid,

* The nature of the transaction, aided by common discretion, generally renders the difficulty of substantiating the charge of corruption nearly insurmountable. Many precedents of informations and indictments on the subject are, however, dispersed over the books of practice. The one selected here was preferred in a case, the grossness of which is indicated by its allegations, and was successful; but it presents a rare instance.

and did then and there corruptly, maliciously, and unjustly prevent and hinder such licence from being granted to the said P. R. to the great damage, &c. of the said P. R. in breach and violation of the duty of the said B. B. and G. I. as such justices as aforesaid, to the evil example, &c. and against the peace, &c.

County of } That at the general quarter session
 (to wit.) } of the peace of our Lord the present
 King, holden at K. in and for the division of L. in the
 county of L. on, &c. before R. E. and B. P. esquires,
 and others their fellows, justices of our said Lord the
 King, assigned, &c. an indictment was found by the
 jurors, then and there impanelled, sworn and charged to
 enquire for our said Lord the King, &c. in the following
 words, viz. Division of L. in the county of L. to wit, the
 jurors, &c. [*here set out the indictment for the non-repair of
 the highway.*] And the jurors, &c. do further present,
 that at the general session of the peace holden at K. afore-
 said, in and for the division and county aforesaid, on, &c.
 before R. E. and M. D. esquires, and other their fellows
 justices of our said Lord the King, assigned, &c. T. O.
 and T. D. two inhabitants of the township of W. aforesaid,
 came and personally appeared to the said indictment, and
 then and there, on behalf of themselves and the rest of the
 inhabitants of the township of W. aforesaid, submitted to
 the said indictment, and that thereupon the judgment of the
 said court was then and there given in the premises, and a
 fine of fifty pounds was thereby imposed and laid upon the
 said inhabitants, for the said offence, in the said indict-
 ment specified. And the jurors, &c. do further present,
 that at the general quarter sessions of the peace, holden,
 &c. before R. E. and M. D. esquires, and others, &c.
 assigned, &c. it was ordered by the same court and justices
 last-above-named, that the said fine, so as aforesaid im-
 posed and laid upon the said inhabitants of the township
 of W. as aforesaid, should be estreated and levied, and the
 said court did order and direct that the said fine of fifty

Against a sur-
 veyor of the
 highways for
 not making a
 rate on all the
 occupiers of
 land liable to
 repairs to pay
 for such ac-
 cording to
 warrant, to
 him directed.

pounds should be levied upon the said inhabitants, and be paid into the hands of T. O. surveyor of the highways in the township of W. aforesaid, (the said T. O. being then and there a person residing within the said township) and that the said fine so as aforesaid, when levied and paid, should be by the said T. O. applied towards the repair, amendment, and enlargement of the same highway. And the jurors, &c. do further present, that afterwards, on, &c. at, &c. aforesaid, the said fine of fifty pounds was in due manner levied by the said T. O. upon R. R. then and still being one of the inhabitants of the township of W. aforesaid, in pursuance and execution of the said order, and of the said judgment so given as aforesaid. And the jurors, &c. do further present, that a special sessions for the highways was, pursuant to the statute in that case made and provided, duly held at the house of P. Q. being the sign of the Red Lion, in K. within the hundred of K. and division of L. in the county of L. on, &c. before D. R. esquire, and B. E. clerk, two of his said Majesty's justices of the peace for the said division and county, within the said hundred, due notice having been first given of the holding of the same session, pursuant to the statute in that behalf, and that the said R. R. did personally appear and make his complaint to the said justices of the peace at the said special sessions of and concerning the levying the said fine upon him the said R. R. as aforesaid, and the said last-mentioned justices of the peace, at the said special sessions, did then and there duly issue and make a certain warrant in writing under their hands and respective seals, and did thereby order, direct and appoint amongst other things, that an equal and sufficient rate or assessment upon all and every the occupiers of lands, tenements, woods, tythes, and hereditaments within the said township of W. should be forthwith made by the surveyors of the highways of the said township, for the reimbursing the said R. R. the said sum of eighty pounds so levied on him as aforesaid, which said warrant so made as aforesaid, was afterwards, to wit, on, &c. in the township of W. aforesaid, delivered to and left with the said T. O. then and there being one of

the surveyors of the highways in and for the said township of W. to be by him and the other surveyor of the said highways in the township of W. executed in due form of law. And although A. Z. who then and there was and still is the other surveyor, for the township of W. hath always been ready and willing to execute the said warrant on his part, and to join with the said T. O. in making the said rate or assessment as aforesaid, yet the said T. O. late of W. in the said county of L. yeoman, not regarding his duty in that behalf, hath not at any time since the said warrant was so made and delivered to him as aforesaid, made or joined or assisted in the making an equal rate or assessment upon all and every the occupiers of lands and tenements, woods, tythes, and hereditaments within the said township of W. for the purpose aforesaid, although often requested by the said R. R. so to do, but on the contrary thereof, the said T. O. on, &c. and ever since, (then and still being one of the surveyors of the highways in and for the township of W.) at W. aforesaid, unlawfully and contemptuously did neglect and refuse, and hath neglected and refused to make, join and assist in the making of an equal and sufficient rate or assessment upon all and every the occupiers of lands, &c. within the township of W. for the purpose aforesaid, as by the said warrant under the hands and seals of the said last-mentioned justices at their special sessions aforesaid, he the said T. O. one of the surveyors of the highways for the said township of W. was required to do, in contempt, &c. to the civil example, &c. and against the peace, &c.

County of } That before and at the time of the
 (to wit.) } passing of a certain act of parliament,
 made and passed in the thirty-third year of the reign * of

For disobeying
 an order of jus-
 tices for relief,
 under friendly
 society act,
 33 Geo. 3. c. 54.

* On this subject generally see 4 T. R. 202. — The statute of 33 Geo. 3. having been enlarged by 35 Geo. 3. c. 101. the circumstances of the institution, in point of date, and other particulars, may be made conformable with the provisions.

our Sovereign Lord George the Third, by the grace of God, &c. intituled "An Act for the Encouragement and Relief of Friendly Societies," a certain friendly society called the Widows' Benefit Club, had long been and still is existing, to wit, at, &c. in the county of, &c. and that all the articles, rules, and regulations under which the said society was thereafter to be governed, were duly, and according to the direction of the said statute, exhibited, allowed, and confirmed and filed of record, at the general quarter sessions* of the peace, holden at, &c. in and for the said, &c. before the feast-day of St. Michael, in the year of our Lord to wit, on, &c. to wit, at, &c. aforesaid, and afterwards at the general quarter session of the peace, holden in and for the said county, on, &c. certain new rules, orders, and regulations under which the said society was thereafter further to be governed,† were exhibited, allowed, and confirmed, and then and there filed of record, according to the direction of the said statute, at, &c. aforesaid, and that according to one of the said last mentioned rules, orders, and regulations, to wit, the seventeenth, it was, amongst other things, ordained, that, &c. [*here set*

* By 59 Geo. 3. c. 126. it is enacted, That the general quarter sessions may publish general rules for the formation and government of all friendly societies, thereafter to be established, within their respective jurisdictions, on the foundation of which rules, *petty sessions* shall have the power of revising the exhibitions of, and confirming, the establishments and regulations of, all such friendly societies, in like manner as it was directed to be done at *general quarter sessions* by the previous statutes.

† The same statute (59 Geo. 3. c. 128.) enables friendly societies to make alterations in their articles and rules, from time to time, by memorial to the justices in general, *or in petty sessions*, for that purpose, such memorial being previously signed with the names of the trustees of such society. And, according to this statute, every such society, established under its authority, must have at least three trustees, two of them being substantial householders. So that respecting all friendly societies, established after 12 July, 1819, justices are not entitled to make any order unless the provisions of this statute have been complied with; consequently, therefore, if such order be made, it will be nugatory, and no indictment can lie for disobedience to it.

forth the rule verbatim.] And the jurors, &c. do further present, that one A. M., of, &c. for a long space of time, and before the exhibition, allowance, confirmation, and filing of record of the said last mentioned rules, orders, and regulations as aforesaid, had been and was a member of the said society, duly admitted and enrolled in the said society's book, for the space of year, to wit, at, &c. aforesaid, and that she the said A. M., so having been and being such member as aforesaid, before and on, &c. at the, &c. aforesaid, was by sickness rendered incapable of and disabled from working at her trade or business of a sempstress, or otherwise, for her livelihood, and did afterwards, to wit, on the, &c. aforesaid, at, &c. aforesaid, give and cause to be given due notice of, and declare and cause to be declared, the same to one E. B., late of the said, &c. widow, she the said E. B. at the time of giving such notice, and from thence hitherto continually having been Protectress of the said society, according to the rules, orders, and regulations thereof, to wit, at, &c. aforesaid, whereby and by virtue of the said last mentioned rules, orders, and regulations, the said A. M. then and there became and was entitled to, and did thereupon claim to be allowed, during the time for which she should continue so incapable as aforesaid, the sum of five shillings per week from the funds of the said society, according to, and in conformity with, the seventeenth section of the said articles, rules, and regulations of the said society, so as aforesaid exhibited, allowed, confirmed, and filed of record. [*N. B. The facts to be stated in conformity with the rule as it stands confirmed by the session.*] And the jurors, &c. do further present, that a certificate, under the hand of D. G., surgeon to the said society, that she the said A. M. was by sickness rendered incapable of working at her trade or business, or otherwise for her livelihood, was afterwards, that is to say, on the said, &c. delivered to the said E. B., to wit, at, &c. aforesaid. And the jurors aforesaid, on their oath aforesaid, do further present, that the said A. M. was upon and from and after the said, &c. aforesaid, by sickness rendered incapable of, and disabled from, working at her trade or business, or

otherwise for her livelihood, and so remained and continued until, &c. by reason whereof and according to the tenor and effect of the articles, rules, orders, and regulations of the said society, the said A. M. had on, &c. last aforesaid, become and was lawfully entitled to receive from the said E. B. as such Protectress as aforesaid, a large sum of money, to wit, the sum of seven pounds and ten shillings, for thirty weeks' allowance of five shillings per week from the funds of the said society, to wit, at, &c. aforesaid. And the jurors, &c. do further present, that the said E. B. as such Protectress as aforesaid, did not and would not on the said, &c. pay to the said A. M. the said sum of seven pounds and ten shillings from the fund of the said society, but from, &c. to the said, &c. had only paid to the said A. M. the sum of fifteen shillings, and the remaining sum of six pounds fifteen shillings still remains due and unpaid from the funds of the said society, by the said E. B. as such Protectress as aforesaid, to the said A. M., and the said E. B. as such Protectress as aforesaid, during all the time last aforesaid, continually neglected, forbore, and refused to pay to the said A. M. any more or further sum of money for, or on account of the sickness and disability of her the said A. M. as aforesaid, from the funds of the said society, to wit, at, &c. aforesaid, and the said A. M. so being by sickness rendered incapable of and disabled from working at her said trade or business, or otherwise for her livelihood, on the same day and year last aforesaid, at, &c. aforesaid, personally came and appeared before W. P. and C. G., Esqs. being two of the justices of our said Lord the King assigned to keep the peace in and for the said county of and then and there residing in the said county of and also to hear and determine divers felonies, trespasses, and other misdemeanors within the said county of committed, and then and there residing, and each of them residing in the said county of and then and there before the said W. P. and C. G., Esqs. being such justices aforesaid, took her corporal oath upon the holy gospel of God, they the said justices then and there having competent authority to administer an oath the said A. M. in that behalf, and did

depose and give the said justices to understand and be informed that she the said A. M. had been for years and upwards, and still was a member of the said society, and that she the said A. M. before and on, &c. was by sickness rendered incapable of, and disabled from, working at her trade or business, or otherwise for her livelihood, and did give due notice of, and declare, the same to E. B., of the parish of in the said county, widow, she the said E. B., at the time of giving such notice, being Protectress of the said society, according to the rules of the said society, and did thereupon claim to be allowed the weekly sum of five shillings during the time which she should continue so incapable as aforesaid, from the funds of the said society, pursuant to the articles of the said society, and that a certificate under the hand of D. G., surgeon to the said society, that she the said A. M. was by sickness rendered incapable of working at her trade or business, or otherwise for her livelihood, was on the said, &c. delivered to the said E. B., and that the said A. M. had ever since the said, &c. been and still was by sickness rendered incapable of, and disabled from, working at her trade or business, or otherwise for her livelihood, and on, &c. then instant became and still is entitled, according to the rules of the said society, to the sum of six pounds fifteen shillings, which, with fifteen shillings already received from the said E. B. made the sum of seven pounds and ten shillings, for thirty weeks' allowance from the funds of the said society, and that the said E. B. had not paid to the said informant A. M. the said sum of six pounds fifteen shillings, to which she was entitled as aforesaid, or any part thereof, and that the same was still due and owing to the said A. M., according to the rules of the said society, to wit, at the, &c. aforesaid. And the jurors, &c. do further present, that the said W. P. and C. G., being such justices as aforesaid, did thereupon afterwards, to wit, on, &c. aforesaid, duly summon the said E. B. to appear before them the said W. P. and C. G. so being such justices as aforesaid, to show cause why the said sum of six pounds fifteen shillings should not be paid to the said A. M. accordingly, and that the said E. B. having been

so summoned as aforesaid, afterwards, to wit, on, &c. last aforesaid, at, &c. aforesaid, and before the said W. P. and C. G., being such justices as aforesaid, personally appeared to show to the said justices cause why the same should not be paid as by the said summons she was required: and that the said W. P. and C. G., being such justices as aforesaid, did thereupon afterwards, to wit, on, &c. last aforesaid, at, &c. aforesaid, hearing as well what was alleged and proved, as well by the said A. M. as by the said E. B., of and concerning the premises before them, the said justices did then and there make their certain order in writing,* signed with their proper hands, and sealed with the respective seals of them the said W. P. and C. G., so being such justices as aforesaid, the tenor of which said order is as follows: [*here set forth the order.*] And the jurors, &c. do further present, that the said order of the said W. P. and C. G., justices as aforesaid, so made as aforesaid, was duly delivered to the said E. B., being such Protectress of the said society called or known by the name of the Widows' Benefit Club as aforesaid, to be by her obeyed in all things according to the exigency thereof; and according to her duty as Protectress of the said society. And the jurors, &c. do further present, that she the said E. B. so being such Protectress as aforesaid, and so having received the said order of the said W. P. and C. G., justices as aforesaid, afterwards, to wit, on, &c. aforesaid, and from thenceforth hitherto, at, &c. aforesaid, unlawfully, wilfully, obstinately, and contemptuously did neglect and refuse to, &c. (*negating the performance of the specific injunction contained in the order, in the terms thereof,*) contrary to the duty of the said E. B. and to the directions of the statutes in that case made and provided; in disobedience of the order aforesaid, in contempt, &c. and against the peace, &c.

* See post, "Orders of justices." No appeal lies to such orders, and a summary remedy for disobedience is given by 49 Geo. 3.; wherefore, *quere* as to the propriety of indicting?

RECEIVERS.*

County of } The jurors for our Lord the King } For receiving
 (to wit.) } upon their oath present, that A. B., late } goods stolen by
 of the parish of C. D., in the county of E., labourer, being } a person un-
 a person of evil name and fame, and of dishonest conversa- } convicted and
 unknown.

* In petit larceny, there being no accessaries, those who procure, aid, or advise, are principals; even those who merely assist the felon's escape were not, at common law, regarded as criminal. 1 Hale. 530. This offence of receiving was only a misdemeanor, and could not be punished with any severity adequate to its mischievous effects. It was, therefore, made the subject of several legislative provisions, which see, *ante*, p. 155. and Evans's Stat. v. 6. p. 515.

The 3 W. & M. c. 9. § 4. enacts, That if any person shall buy or receive any goods or chattels that shall be feloniously taken or stolen from any other person, knowing the same to be stolen, he shall be taken and deemed an accessory to such felony after the fact, and shall incur the penalties which attach to offenders in that degree. After this act, no indictment as for a misdemeanor, at common law, could be supported. 1 *Ld. Raym.* 711. This act, making the receivers of goods accessaries as the receivers of felons were before, created no new offence; and, therefore, the persons against whom it was directed, merely became accessaries as at common law, and could not be punished in case of the principal's escape.

After the reference which has been already made, to an anterior page, exhibiting the succession of statutes passed to remedy this inconvenience, it is unnecessary to dwell upon any of them here, till we come to the 22 Geo. 3. c. 58. which enacts, That in all cases whatsoever, where any goods or chattels (except lead, iron, copper, brass, bell-metal, and solder) shall have been feloniously taken or stolen, whether the offence of the principal shall amount to grand larceny, or some greater offence, or to petit larceny only, (except where the person or persons actually committing the felony shall have been already convicted of grand larceny or of some greater offence) every person who shall buy or receive any such goods or chattels, knowing the same to have been so taken or stolen, shall be deemed guilty of, and may be prosecuted for, a misdemeanor, and shall be punished, by fine imprisonment, or whipping, as the court of quarter session, who are hereby empowered to try such offender, or as any other court, before whom he shall be tried, shall think fit, although the principal felon be not before convicted of the said felony, and whether he is amenable to justice or not. And in cases where the felony actually committed shall amount to grand larceny or some greater offence, and where the person or persons actually committing such

tion, and a common buyer and receiver of stolen goods, on the day of in the year of the reign of our Sovereign Lord George the Third, now King of Great Britain, &c. with force and arms, at the parish aforesaid, in the county aforesaid, one pair of silver shoe-buckles, of the value of ten shillings, of the goods and chattels of F. G., by a certain ill disposed person, to the jurors aforesaid *as yet unknown*, then lately before stolen, taken, and carried away of the same ill disposed person, unlawfully and unjustly, and for the sake of a wicked gain, did receive and have, he the said A. B. then and there well knowing the said goods and chattels to have been feloniously stolen and carried away; to the great damage of the said F. G., against the form of the statute in that case made and provided, and against the peace of our said Lord the King, his crown, and dignity.

Against an accessory for receiving stolen goods in one county, where principal was convicted in another.

County of } The jurors, &c. that at the delivery
(to wit.) } of the gaol of our Lord the King of his
county of * holden at in and for the county

felony shall not be before convicted, such offender shall be exempted from being punished as accessory if such principal felon shall be afterwards convicted. The metals excepted in this act are specially provided for by 29 Geo. 2. c. 30. See *ante*, p. 146.

* In cases of receiving goods in one part of the kingdom which are stolen in another, there was formerly some difficulty as to the place in which the venue should be laid: but this is entirely removed by 13 Geo. 3. c. 31. § 5. as it respects Scotland and England, which enacts, that the venue shall be laid in the jurisdiction in which the defendant was guilty of receiving, as if the original felony had been committed there. And by 44 Geo. 3. c. 92. § 8. after the union with Ireland, the same rule is laid down where the theft is committed in one of the three parts of the united kingdom, and the receiving takes place in another.

If the principal offender be *unknown*, it has been already shown that the indictment will be good if it so describe him; but wherever he is known, the averment ought to be according to the truth of the facts concerning him. 3 Camp. 264.

In indictments on the statutes, on which the receiver may be punished, though the original felon is *not* convicted, the latter may be

aforesaid, on, &c. before Lord Chief Justice of our Lord the King, assigned to hold pleas in the court of our said Lord the King, before the King himself, and Sir knight, one other of the justices of our said Lord the King, assigned to hold pleas in the court of our said Lord the King, before the King himself, then justices of our said Lord the King assigned to deliver the said gaol of the prisoners therein being, W. B., late of, &c. labourer, was duly convicted,* for that he the said W. B., on, &c. with force and arms, at, &c. twelve silver spoons, of the value of five pounds, of the goods and chattels of one D. M. then and there being found, feloniously did steal, take, and carry away, against the peace of our said Lord the King, his crown, and dignity, as by the record thereof remaining filed in the said court of gaol delivery, may more fully and at large appear. And the jurors aforesaid, upon their oath aforesaid, do further present, that T. O., late of, &c. broker, afterwards, to wit, on the said, &c. with force and arms, at the parish of in the county of aforesaid, the goods and chattels aforesaid, so as aforesaid feloniously stolen, taken, and carried away, feloniously did receive, and have, (the said T. O. then and there well knowing the aforesaid goods and chattels to have been feloniously stolen, taken, and carried away,) against the form of the statute in that case made and provided, and against the peace of our said Lord the King, his crown, and dignity.

examined as a witness on the trial. 1 Leach, 418, 419. 2 Leach, 927. in *notes*.—It has been said, if the prisoner *can be* indicted as an accessory to a *felony*, he ought not to be tried for a misdemeanor. But *quere*, 2 Stark. Ind. 458. in *notes*. And a receiver may be one under such circumstances, that he can neither be indicted as principal, or accessory, though the offence be grand larceny, and the principal convicted. See *ante*, p. 159.

* Where the receiver is indicted as accessory, to support the averment that the original felon *was duly convicted*, it is sufficient to give in evidence an examined copy of the record showing that he was found guilty of the felony before a court of competent jurisdiction; and the judgment will be good against such accessory till it be reversed. 3 Camp. 265: but it is not conclusive; for he may dispute the guilt of the principal, and by showing his innocence will necessarily establish his own. 1 Leach, 298.

For receiving stolen lead, knowing it to be stolen, on 29 Geo. 2. c. 30. for a misdemeanor before the conviction of the principal felon, though known.

Second count, for receiving, &c. under value, &c. the principal felons being unknown.

County of } The jurors of our said Lord the King
(to wit.) } upon their oath present, that B. C. late of, &c. and D. E. late of the same, brokers and carpenters, being common buyers and receivers of stolen lead, iron, copper, and bell-metal, and other things, on the second day of March, in the fifty-first year of the reign of our Sovereign Lord George the third, King of Great Britain, &c. with force and arms, at, &c. aforesaid, unlawfully and unjustly, did buy and receive, and each of them did buy and receive, ten pounds and one half-pound weight of lead, of the value of three shillings, and twenty pounds' weight of copper, of the value of ten shillings, of the goods and chattels of one T. O. J. then lately before feloniously stolen, taken and carried away by one D. D. and by one T. D., they the said B. and D. and each of them, then and there well knowing the same to be stolen and unlawfully come by, against the form of the statute, &c. and against the peace, &c. And the jurors, &c. do further present, that the said B. C. and D. E. afterwards, to wit, on the same day and year aforesaid, with force and arms, at, &c. aforesaid, unlawfully, and unjustly, in a clandestine manner, at under rates, prices and values, did buy and receive, and each of them did buy and receive from the aforesaid D. D. and T. D., other ten pounds and one half-pound weight of lead, of the value of three shillings, and other twenty pounds' weight of copper of the value of ten shillings, of the goods and chattels of the aforesaid T. O. J. there lately before feloniously stolen, taken, and carried away, by certain ill-disposed persons, to the jurors, aforesaid as yet unknown, they the said B. C. and D. E., and each of them then and there well knowing the same to have been stolen, and unlawfully come by, against the form, &c. and against the peace, &c.

RIOTS, ROUTS, AND UNLAWFUL ASSEMBLIES.*

County of..... } That A. B. &c. late of, &c., C. D., late
(to wit.) } of, &c. and E. F., late of, &c. together Common form
of indictment
for a riot.

* A RIOT seems to be a tumultuous disturbance of the peace, by *three persons or more*, assembling together of their own authority, with an intent mutually to assist one another, against any one who shall oppose them, in the execution of some enterprize of a *private nature*, and afterwards *actually executing* the same in a violent and turbulent manner, to the terror of the people, whether the act intended were of itself lawful, or unlawful. 1 Hawk. c. 65. § 1. R. v. Soley, 11 Mod. 116.

A ROUT seems to be, according to the general opinion, a disturbance of the peace, by persons assembling together with an *intention* to do a thing, which, if it be executed, will make them rioters. 19 Vin. Ab. (Riots, &c.)

AN UNLAWFUL ASSEMBLY, according to *the common law*, is said to be a disturbance of the peace, by persons barely assembled together with an intention to do a thing, which if it were executed would make them rioters, but *neither actually executing* it, nor *making a motion towards* the execution of it. 1 Hawk. c. 65.

But this seems altogether much too narrow a definition. For *any meeting whatever* of great numbers of people, with such circumstances of terror as *cannot but endanger the public peace, and raise fears and jealousies among the King's subjects*, seems properly to be an unlawful assembly; as where great numbers complaining of a common grievance meet together, armed in a warlike manner, in order to consult together, concerning the most proper means for the promotion of their schemes, for no one can foresee what may be the event of *such* an assembly. 4 Black. Com. 142.—Russel. C. & M. 351.

Also an assembly of a man's friends for the defence of his person, against those who threaten to beat him, if he go to such a market, or the like, is unlawful; for he ought to demand surety of the peace, and not make use of such violent methods, which cannot but be attended with the danger of raising tumults and disorders to the disturbance of the public peace: yet an assembly of a man's friends *in his own house*, for the defence of the possession thereof against those who threaten to make an unlawful entry therein, or for the defence of his person against those who threaten to beat him therein, is indulged by law; for a man's house is looked upon as his castle. 1 Hawk. c. 65, § 10. 11 Mod. 116. But the like liberty is not allowed by the law to a man in defence of other property, as, *ex. gr.* his close. R. v. Bishop of Bangor, 1 Russel. C. & M. 363, in notes.

Other assemblies are declared *unlawful by two statutes*, especially, of

with divers other evil disposed persons to the number of

very recent date. First, the 60 Geo. 3. c. 1. enacts that every person who shall be present at any meeting or assembly for the purpose of training and drilling any other person to the use of arms, or the practice of military exercise, movements, &c. or who shall train or drill any person to such practices, &c., or who shall aid and assist therein, without lawful authority from his Majesty, or lord-lieutenant, or two justices of the county, riding, &c. being legally convicted thereof, (i. e. by indictment and verdict,) shall be liable to fine and imprisonment for not exceeding two years. And all persons so assembled, &c. may be detained and committed for trial, unless sufficiently bailed until next assizes, or sessions, general or quarterly. But prosecutions must be commenced within six months after the commission of the offence.

Secondly, the 60 Geo. 3. c. 6. which incorporates, renews, and extends the provisions of a former statute, (57 Geo. 3. c. 19.) all the enactments of which from sect. 22. were still in force, and enacts,

First, That no meetings of more than fifty persons, (except meetings holden in private rooms, and those for returning members to parliament, and county meetings called by the lord-lieutenant or Custos Rotulorum, or sheriff, or five acting justices of the peace, or by the major part of the grand jury at the assizes, or of any city, borough, or town corporate convened by the mayor, or other head officer, or of any ward or division of a city by the alderman, or other head officer of such ward, &c.) shall be holden for any *public purposes* (*therein enumerated particularly*) unless in separate parishes or townships; and with notice of at least six days, subscribed by at least seven resident householders, with their names and places of abode, of the place and time of holding such intended meeting, such place and time being subject to alteration and adjournment by such justice. And all persons (except members of parliament serving for the places respectively for which such meetings shall be holden, and voters for cities, &c. attending meetings called by mayors, &c. of the same; justices of the peace, sheriffs, under sheriffs, constables, and other peace officers, and their deputies,) who shall attend upon *such* meetings exceeding the number of fifty persons, unless they be freeholders, copyholders, renters, or householders usually resident, respectively, shall be liable to be tried, and if convicted, to be fined and imprisoned for not exceeding twelve calendar months.

Meetings for purposes declared unlawful by this statute, to be dispersed by proclamation, *after which* every person not *entitled to attend*, remaining *one quarter of an hour*, shall be liable to be seized by any person having a qualification to attend, to be taken before a justice, committed, tried, and if *convicted*, transported as for a felony, for not exceeding seven years. And if such meeting do not disperse, a second proclamation shall be made, and if *any twelve persons* remain together,

ten and more,* (to the jurors aforesaid as yet unknown) † on, &c. with force and arms at, &c. aforesaid, did unlawfully, riotously, routously, and tumultuously, assemble and gather together to disturb the peace of our said Lord the

notwithstanding such proclamation, for *half an hour*, such twelve or more shall be liable to similar proceedings.

Persons propounding or maintaining any proposition at such meetings, in subversion of the constitution, and required by proclamation to disperse, refusing so to do, subject to similar proceedings;—also persons obstructing justices, and peace officers, liable to the same.

Persons attending such meetings (except justices, magistrates, and peace officers) with arms, weapons, &c. subject to trial, and if convicted to fine, and not exceeding two years' imprisonment. Persons attending with flags, banners, drums, or other military array, subject to a similar punishment.

(Other offences (especially respecting houses of resort for seditious purposes) are declared and punished by this statute, but being subjected to pecuniary forfeitures, and through the medium of summary conviction before magistrates out of sessions, they do not come regularly within our observation in this place.

* Therefore on an indictment for a riot against three or more, if a verdict acquit *all but two*, and find them guilty, it is repugnant and void, unless the indictment charge them with having made such riot *together with divers other persons unknown*: for otherwise it appears that the defendants are found guilty of an offence whereof it is impossible that they should be guilty, for there can be no riot where there are no more than two persons. 2 Hawk. c. 47. And let it be observed, that though women are amenable to the law as rioters, infants of both sexes, under the years of discretion, are not. 1 Hawk. c. 65.

† So where six were indicted for a riot, and two of them died before trial, two were acquitted, and two only found guilty, yet judgment was given upon this verdict, for by Lord *Mansfield* they must have been found guilty with one or both of those who had not been tried, or it could not have been a riot. 3 Burr. R. 1262. R. v. Scott.

If a number of persons being met together at a fair or market, or any other lawful or innocent occasion, happen on a sudden quarrel to fall together by the ears, they are not guilty of a riot, but of sudden affray only, of which none are guilty, but those who actually engage in it, because the design of their meeting was innocent and lawful, and the subsequent breach of the peace happened unexpectedly without any previous intention concerning it. 1 Hawk. c. 65.

King; * and being so then and there assembled, and gathered together, † did then and there make great noises, riot, tumult, and disturbance, and then and there unlawfully, riotously, routously, and tumultuously, remained and continued together making such noises, riot, tumult, and disturbance, for a long space of time, to wit, for the space of six hours and more, then next following, to the great terror and disturbance ‡ not only of the liege subjects of our said Lord the King, there and thereabouts inhabiting, residing,

* It is said, that an indictment for a riot must alledge for what purpose the rioters assembled, that the court may judge whether it was lawful, or not. *R. v. Gulston, Ld. Raym. 1210.*

† Yet it is said, that if persons innocently assembled together, do afterwards upon a dispute happening to arise among them, form themselves into parties, with promises of mutual assistance, and then make an affray, they are guilty of a riot, because, upon their confederating together with an intention to break the peace, they may as properly be said to be assembled together for that purpose from the time of such confederacy, as if their first coming together had been on such a design. *Ibid.*

Also it seems to be certain, that if a person, seeing others actually engaged in a riot, do join himself unto them, and assist them therein, he is as much a rioter as if he had at first assembled with them for the same purpose, inasmuch as he has no pretence that he came innocently into the company, but appears to have joined himself unto them, with an intention to second them in the execution of their unlawful enterprize; and it would be endless, as well as superfluous, to examine whether every particular person engaged in a riot, were in truth one of the first assembly, or actually had a previous knowledge of the design thereof. *Ibid.*

It hath been holden, that the enterprize ought to be accompanied with some offer of violence, either to the person of a man, or to his possessions, as by beating him, or forcing him to quit the possession of his lands or goods, or the like; and from hence it seems to follow, that persons riding together on the road with unusual weapons, or otherwise assembling together in such a manner as is apt to raise a terror in the people, without any offer of violence to any one in respect either of his person or possessions, are not properly guilty of a riot, but only of an unlawful assembly. *1 Hawk. c. 65. § 4.*

‡ However, it seems clearly to be agreed, that in every riot there must be some circumstances either of actual force or violence, or at least of an apparent tendency thereto, as are naturally apt to strike a terror into the

and being; but of all the other liege subjects of our said Lord the King, there passing and repassing in and along the public streets and King's common highways there, in contempt of our said Lord the King and his laws, and against the peace of our said Lord the King, his crown and dignity.

County of } That on, &c. and long before that For a rout in a
(to wit.) } time, A. B. and C. D. were the pro- theatre, in
prieters and managers of a certain theatre or play-house, pel the dis-
situate in the parish of in the town of M. and mission of an
county of L., and then and there had lawful power, licence actor.
and authority,* from time to time, for the space of

people, as the show of armour, threatening speeches, or turbulent gestures. 1 Hawk. c. 65.

For an assembly may meet together with such circumstances of terror, as to be "a riot." 2 Salk. 594.

And every such offence must be laid to be done *to the terror of the people*. 1 Hawk. c. 65.

* Among the descriptions of vagrants described by 17 Geo. 2. c. 5. are "common players of interludes, and all persons who shall for hire, gain, or reward, act, represent, or perform, or cause to be acted, &c. any interlude, tragedy, comedy, opera, play, farce, or other entertainment of the stage, or any part therein, *not being authorized by law*."

But, by 28 Geo. 3. c. 30, "it shall be lawful for the justices at the general or quarter sessions, at their discretion, to grant a licence to any person making application for the same by petition for the performance of *any such* plays or entertainments of the stages, as are, or shall be represented at the licensed theatres in Westminster, or have been submitted to the inspection of the lord chamberlain as aforesaid, at any place within their jurisdiction, or within any city, town, or place, situate within the limits of the same, for any time *not exceeding sixty days*, to commence within the then next six months, and to be within such four months as shall be specified in the said licence, so as there be only one licence in use at the same time, within the jurisdiction so given, and so as such place be not within twenty miles of London or Westminster, or eight miles of any patent or licensed theatre; or ten miles of the residence of the king; or of any place within the same jurisdiction, at which, within six months preceding, a licence under this act shall have been had and exercised; or within fourteen miles of either of the universities; or within two miles of the outward limits of any city, town, or place, having peculiar jurisdiction; and so also, as no licence under

days, viz. from the day of in the year, &c. to the day of in the same year, to shew, exhibit, present, and perform, within the said theatre, such certain plays and entertainments of the stage, as had then theretofore been represented at the licenced theatres, in the city of Westminster, &c., and to hire and keep such and so many players and persons to act tragedies, comedies, and plays, within the said theatre, as they should think convenient and necessary, and such persons to permit and continue at and during the pleasure of the said proprietors and managers from time to time to act tragedies, comedies, and plays, within the same, peaceably and quietly, without impeachment or impediment of any person or persons whatsoever, to wit, at M. aforesaid, in the said county of L., and the jurors, aforesaid, &c. That on the said, &c. P. Q. gentleman, was a person who used and followed the profession of a player, and then was, and long before that time had been privileged, kept, and retained as a player, in the way of his said profession, by the said A. B. on behalf of himself, and C. D. aforesaid, being such proprietors and managers as aforesaid, for and during a certain time not then expired, at and for a certain remuneration or reward, therefore payable by them the said proprietors and managers, to the said P. Q. when and so often as he should act and perform any part in any of the said tragedies, comedies, or plays as aforesaid, at M. aforesaid, and that the said P. Q. then,

this act shall have been had and exercised at the same place within eight months then next preceding. § 1.

But no such licence shall be granted to be exercised within any city, town, or place, having peculiar jurisdiction, unless proof be made that the majority of the justices acting for such place have at a public meeting signed their consent; or unless an express condition be therein inserted, that the same shall not be valid until approved by the majority of the justices of such place, at a meeting holden expressly for that purpose. § 2.

Nor shall such licence be granted by the justices within any city, town, or place, unless notice shall have been given by the person applying for such licence, three weeks before such application to the mayor, bailiff, or other chief civil officer of such place, of such intended application. § 3.

and for divers, to wit, ten years then last past, sought his living, and sustained himself and his family by his said profession and character of a player, and thereby gained and acquired sundry great gains, and a comfortable subsistence for himself and his family. And the jurors aforesaid, &c. further, &c. that on the said, &c. a certain old play called Venice Preserved, which said play of Venice Preserved had then been represented for many, to wit, fifty and more years, at the licensed theatres, in the city of Westminster aforesaid, was appointed by the said A. B. and C. D. proprietors and managers aforesaid, to be presented that day at and in the said theatre at M. aforesaid, and that the said P. Q. as such player as aforesaid, was appointed by the said A. B. and C. D. to play and perform a certain part in the said play, called and distinguished by the name of Jaffier. And the jurors aforesaid, &c. that E. F., G. H., K. L., [*the defendants*] with divers other evil-disposed persons to the jurors aforesaid as yet unknown, with force and arms, on the said, &c. at, &c. aforesaid, did unlawfully, riotously, and routously assemble and gather together in the said theatre, to disturb the peace of our said Lord the King, and being so assembled and gathered together in the said theatre, then and there unlawfully, wickedly, riotously, *routously*, at and in the said last mentioned theatre or play-house, made and raised a loud hissing, and caused and procured to be made and raised a great noise, rout, tumult, and disturbance, and thereby then and there unlawfully, routously, tumultuously and turbulently prevented and hindered the said P. Q. from playing and performing the said part of Jaffier, in the said play called Venice Preserved,* and then and there wholly obstructed and prevented the

* It was recently laid down, that although the audience at a theatre have a right to express their disapprobation of any performance or actor, exciting their displeasure at the moment; yet, if a number of persons go thither *with an intention to make a disturbance* and render the performance inaudible, though they offer no actual violence to the house, or any person there, they will be guilty of a riot, or, according to the foregoing definitions, a *rout*. 2 Campb. 358.

performance of the said play, there in the said last mentioned theatre, without the consent and against the will of the said A. B. and C. D. then proprietors thereof; and then and there also, unlawfully, riotously, routously, tumultuously, and maliciously assayed and endeavoured to force, compel, and oblige the said A. B. and C. D. such proprietors and managers as aforesaid, against the wills of the said A. B. and C. D. to discharge the said P. Q. without his consent, and against his will, from his said retainer and employment of a player, at the said last mentioned theatre, and wholly to dismiss him therefrom; by means whereof the said P. Q. hath ever since that time hitherto remained wholly unemployed in his aforesaid retainer and employment, and hath wholly lost and been deprived of great gains, which would otherwise have accrued to him therefrom, to wit, at, &c. aforesaid, in contempt of our said Lord the King and his laws, to the manifest injury and empoverishment of the said P. Q. in his said profession and way of livelihood, to the great loss and injury of the said then proprietors and managers of the said theatre, to the evil and pernicious example, &c. and against the peace, &c.

For unlawfully assembling in a tumultuous manner, hanging an effigy on a gibbet, and threatening to serve a person as they served the effigy.

County of } That A. B. late of, &c. (*and other defendants,*) with divers other persons to the jurors aforesaid as yet unknown, to the number of forty and more, being of unruly and turbulent tempers and dispositions, and unlawfully and wilfully intending to disquiet, disturb, and terrify one P. Q. a subject of our Lord the King, on, &c. with force and arms, at, &c. unlawfully, wilfully and riotously, did assemble and meet together, with intention to break and disturb the peace of our said Lord the King, and being so assembled as aforesaid, a certain wooden gibbet in a common highway there called the Green Lane, and near to the dwelling-house of the said P. Q. unlawfully, riotously, routously and contemptuously, did erect, and a certain figure or effigy resembling a man, then and there unlawfully, riotously, routously, and contemptuously did hang and affix to the said gibbet, and did

then and there threaten, that "if they had the said P. Q. they would serve him as they served the said effigy,"-and did then and there unlawfully, riotously, routously, and contemptuously make a very great noise and disturbance for the space of several, to wit, four hours then next following and upwards, to the great damage, terror and affrightment of the said P. Q., to the great terror of all the king's subjects then and there being and passing, in contempt, &c. to the evil, &c. and against the peace, &c.

SOLICITATIONS TO COMMIT OFFENCES.*

County of } That C. F. late of the parish of For soliciting
 (to wit.) } in the county of pawnbroker, on a servant to
 the day of, &c. at, &c. did wickedly and unlawfully embezzle his
 (and feloniously†) solicit and incite one H. D. a menial master's goods
 servant of one D. W. of aforesaid, gentleman, to
 take, embezzle, and steal a certain number, to wit, seven
 of linen napkins of the value of fourteen shillings, of the
 goods and chattels of his master, the said D. W. and to de-
 liver to him the said C. F. the said seven linen napkins, to
 the great damage of his said, &c. to the evil example, &c.
 and against the peace, &c.

County of } That T. B. late of, &c. on, &c. at, For soliciting
 (to wit.) } &c. aforesaid, falsely, subtly, and un- an apprentice
 lawfully did solicit, incite, and persuade one H. N. an ap- to embezzle
 prentice to W. R. of the same parish and county, grocer, his master's
 secretly and clandestinely to take and embezzle divers goods goods.

* It has been observed in a former page, that an attempt to commit a felony, or a misdemeanour, is itself a misdemeanour, and indictable at common law. The soliciting another to commit similar offences, stands in the same predicament, and is liable to similar prosecutions; and it is immaterial whether the solicitation succeed, or not; the intention, and not the accomplishment, constituting the offence.

† It has not been usual in indictments for soliciting felonies, to insert the word "*feloniously*," but Mr. Chitty makes a doubt whether it be not necessary, 3 Chit. C. L. 993.

and chattels of the said W. R. and to give and deliver such goods and chattels to him the said T. B. And that the said T. B. afterwards, to wit, on the said, &c. at, &c. aforesaid, ten pounds of sugar, of the value of fifteen shillings, of the goods and chattels of the said W. R. by the said H. N. then lately before, on the same day and year aforesaid, by the solicitation, incitement, procurement, and persuasion of the said T. B. taken and embezzled, then and there falsely, knowingly, subtly, and unlawfully did receive, obtain and have of, and from, the said H. N. to the great damage of the said W. R. to the evil example, &c. and against the peace, &c.

For soliciting
a youth to per-
mit defendant
to commit
buggery with
him.

County of } That A. B. of, &c. in the county of
(to wit.) } cordwainer, being a person of
a most wicked, lewd, and abandoned mind and disposition,
and devising and intending to vitiate and corrupt the morals
of one C. D., and to stir up and excite in his mind, filthy,
lewd, and unchaste desires, and inclinations, on the
day of at the parish of in the county of
aforesaid, did wickedly, and unlawfully solicit, invite, and
endeavour to persuade the said C. D. to permit and suffer
him the said A. B. then and there feloniously and wickedly
to commit and do that detestable and abominable crime,
called Buggery, with the said C. D., against the order of
nature, to the great displeasure of Almighty God, to the
great damage of the said C. D., and against the peace, &c.

For soliciting
a woman to
commit per-
jury, by
swearing a
child to an
innocent
person.*

County of } That A. B., late of, &c. being a wicked
(to wit.) } and evil-disposed person, and minding and
intending great injury to one C. D. of, &c. a good and valu-
able subject of our said Lord the King, and unjustly to cause

* To solicit, or attempt to persuade, a witness to swear falsely, though such solicitation be ineffectual, is a misdemeanour at common law.
1 Hawk. c. 69.

and procure him to be put to great charges and expence of his monies, and to give security for the maintenance of a child, of which one E. F. spinster was on, &c. pregnant, and which, by the laws of this realm, was likely to become a bastard, did on the same, &c. aforesaid, at, &c. aforesaid, unlawfully, and wickedly solicit, instigate, persuade, and procure the said E. F. to go before one of the justices of our said Lord the King assigned, &c. and that she the said E. F. in consequence of such solicitation, instigation, persuasion, and procurement, did go in her own proper person before G. H. one of the justices of our said Lord the King, assigned, &c. and then and there did, &c. [*state the filiation,*] whereas in truth and in fact, he the said A. B. at the time when he so endeavoured to persuade, solicit, and instigate the said E. F. to make oath and swear as aforesaid, then and there well knew that the said C. D. would be put to great charges and expence of his monies, if she the said E. F. would swear as aforesaid; and whereas in truth and in fact, he the said A. B. at the said time when he so endeavoured to persuade, solicit, and instigate the said E. F. to make oath and swear as aforesaid, had no reasonable or probable cause whatsoever to suspect or imagine that the said C. D. was the father of such child, but on the contrary thereof, the said A. B. was then and there informed by the said E. F. that he the said A. B. was the father of such child, of which she the said E. F. was so pregnant as aforesaid; and whereas in truth and in fact, she the said E. F. never told or informed him the said A. B. that the said C. D. was the father of such child; and whereas in truth and in fact, he the said A. B. so wickedly and unlawfully endeavoured to persuade, solicit, and instigate the said E. F. to swear as aforesaid, in order that he the said A. B. might be exonerated, freed, and discharged from divers expences which might accrue to him as being the father of such child, after the same should be born of the body of her the said E. F. in contempt, &c. to the evil and pernicious example, &c. and against the peace, &c.

For soliciting
a witness to
withhold evi-
dence against
a person in-
dicted.

County of } That on, &c. a certain writ of our
(to wit.) } said Lord the King called a *superna*
ad testificandum, had been and was duly issued and tested
by and in the name of P. Q. of, &c. at, &c. the same day
and year aforesaid, the said P. Q. then and there being
custos rotulorum in and for the said county, which said
writ was directed to B. B. and D. D., by which said writ
our said Lord the King commanded, &c. [*recite the writ.*]
And the jurors, &c. do further present, that a copy of the
said writ was on, &c. at, &c. duly served on the said H. H.
who then and there had notice to appear and give evidence
according to the exigency of such writ, and that the evi-
dence of said H. H. at the time of issuing the said writ,
and from thence until and upon the said, &c. therein men-
tioned, was material and necessary to have been given
before the said grand jury on the said bill of indictment, so
to be preferred against the said A. B. as aforesaid, and that
at the sessions of the peace holden at aforesaid, in
and for the said county of on, &c. aforesaid, such
bill of indictment was preferred against the said A. B. to
and before a certain grand jury then and there duly as-
sembled in that behalf. And the jurors, &c. do further
present, that A. B. late of, &c. being an evil disposed per-
son, and contriving and intending to obstruct and impede
the due course of justice, on, &c. at, &c. unlawfully and
unjustly solicited, persuaded, and prevailed upon the said
H. H. to absent himself from the said sessions of the peace,
holden as aforesaid, and not to appear there before the jus-
tices then and there assembled, to testify the truth and give
evidence before the said grand jury on the said bill of in-
dictment, so preferred against the said A. B. as aforesaid,*
(and the said H. H. in consequence of such solicitation and
persuasion, did not so appear and give evidence according
to the exigency of said writ;) to the great obstruction,

* This is an offence indictable at common law. 1 Hawk. c. 21.
The mere attempt to stifle evidence is criminal, though the persuasion
should not succeed, on the general principle that an incitement to com-
mit any crime is itself criminal. 6 East, 464.

hinderance, and delay of public justice, in contempt, &c. to the evil, &c. and against the peace, &c. And the jurors aforesaid, upon their oath aforesaid, do further present, that on the said, &c. a certain other writ of our said Lord the King had duly issued, directed to the said B. B. and D. D. by which said last mentioned writ, our said Lord the said King commanded the said B. B., and D. D., that, &c. [*recite the writ.*] And the jurors, &c. do further present, that the evidence of the said H. H. at the time of issuing the said last mentioned writ, and from thence until, and upon the said, &c. therein mentioned, was material and necessary to have been given before the said grand jury in the said bill of indictment, so to be preferred against the said A. B. as aforesaid. And the jurors, &c. do further present, that the said A. B. being an evil disposed person, &c. [*Same as first count, saying "endeavoured to dissuade," &c. and omitting the allegation that the solicitation was successful.*]

County of } That A. B. late of, &c. being a per-
 (to wit.) } son of an evil, seditious, and turbulent
 disposition, and maliciously intending and endeavouring to break the peace and to disturb the tranquillity, good order, and government of this realm, and to endanger the persons and property of a great number of his Majesty's quiet and peaceable subjects, on, &c. and on divers other days and times between that day and the first day of in that year, at, &c. aforesaid, unlawfully, wickedly, and maliciously intended, devised and endeavoured as much as in him lay to raise and create insurrections, riots, and tumults within this realm for the disturbance of his Majesty's peace, and to the great terror and annoyance of his liege and peaceable subjects. And that the said A. B. in prosecution of his said wicked intention and purpose, and for the effecting and accomplishing thereof on the said, &c. and on the said other days and times at, &c. aforesaid, with force and arms unlawfully, wickedly, and maliciously solicited, incited, encouraged, and as much as in him lay endeavoured

For soliciting and inciting persons to make a riot. First count, for persuading them to assemble, in consequence of which they did so.

Second count,
omitting the
actual assembling.

and laboured to persuade, instigate, and prevail on divers other liege subjects of our said Lord the King, whose names to the jurors aforesaid are as yet unknown, inhabiting in the said parish of C. and in the neighbourhood of the same, with force and arms unlawfully, riotously, and tumultuously to assemble and gather together to disturb the peace of our said Lord the King, and to injure and annoy a great number of the peaceable subjects of our said Lord the King in their persons and properties, and that by means, and in pursuance, of the said wicked solicitations, instigations, and endeavours of the said A. B. a great number of persons, to the number of one hundred and more to the jurors aforesaid, as yet unknown, afterwards, to wit, on, &c. with force and arms at, &c. aforesaid, unlawfully, riotously, routously, and tumultuously assembled and gathered together to disturb the peace of our said Lord the King, and being so assembled and gathered together, did then and there unlawfully, riotously, routously and tumultuously continue together in a riotous and tumultuous manner for a long time, that is to say, for the space of two hours then next following, and during all that time committed many great violent and enormous outrages in breach of the peace of our said Lord the King, to the very great terror, disturbance, and grievance not only of many of his said Majesty's quiet and peaceable subjects then inhabiting and residing there, but also of all other of his said Majesty's quiet and peaceable subjects then and there passing and repassing in and about their lawful affairs and business, in contempt of our said Lord the King, in open violation of the laws, good order and government of this realm, to the evil and pernicious example, &c. and against the peace, &c. And the jurors, &c. do further present, that the said A. B. being such person as aforesaid, and unlawfully, maliciously and wickedly devising, intending and endeavouring again to disturb the peace of our said Lord the King, and to cause other insurrections, riots, and tumults within this realm, to the great terror, annoyance, and disturbance of his Majesty's liege and peaceable subjects, afterwards, to wit, on the said, &c. at, &c. aforesaid,

unlawfully, wickedly, and maliciously solicited, incited, stirred up, and as much as in him lay endeavoured and laboured to persuade a great number of other liege subjects of our said Lord the King, whose names to the jurors aforesaid are as yet unknown, with force and arms unlawfully, riotously and tumultuously to assemble and gather together to disturb the peace of our said Lord the King, and to terrify, annoy, disturb, and injure many other of his said Majesty's liege, peaceable, and quiet subjects, in contempt, &c. in open violation of the laws, good order, and government of this realm, to the evil and pernicious example, &c. and against the peace &c.

County of } That A. B. late of, &c. being a per- For soliciting
(to wit.) } son of a wicked mind and disposition, an artificer to
and having no regard for the laws and statutes of this dom. leave the king-
realm, nor fearing the pains and penalties therein con-
tained, within twelve months next before the taking of this
inquisition, that is to say, on, &c. with force and arms, at,
&c. aforesaid, unlawfully did contract with one C. D., he
the said C. D. then and there being a manufacturer, work-
man, and artificer of Great Britain, in the manufacture of
weaving linen cloth, then and there being a manufacture
of Great Britain, to go out of this kingdom of Great Bri-
tain into a certain foreign country called America, such
foreign country not then being within the dominions of, or
belonging to, the crown of Great Britain,* in contempt,

* By 5 Geo. 1. c. 27. if any person shall contract with, *entice*, or *solicit*, any artificer in wood, iron, steel, brass or other metal, clock-maker, watch-maker, or *any other* artificer of Great Britain, to go into foreign countries out of the King's dominions, and shall be convicted thereof, upon indictment or information, in any of the courts at Westminster, or at the assizes, or *quarter sessions*, he shall be fined any sum not exceeding 100*l.* for the first offence, and shall be imprisoned three months, and till the fine be paid; and if any person having been once convicted shall offend again, he shall be fined at the discretion of the court, and imprisoned twelve months, and till the fine be paid. § 1.

&c. and against the form, * &c. and against the peace,
 Second count. &c. And the jurors aforesaid, do further present, that

* By the 23 Geo. 2. c. 13. "if any person shall contract with, or endeavour to persuade or seduce any artificer in the manufactures of Great Britain to go into any foreign country, not belonging to the crown of Great Britain, and shall be thereof convicted, in twelve months, in the King's Bench, or at the assizes, he shall for every such person forfeit 500*l.* and be imprisoned in the common gaol for twelve months, and till payment of the forfeiture; and for a second or other subsequent offence, shall forfeit 1000*l.* and be imprisoned two years, and till payment." § 1, 2.; c. 67. § 6, 7.

This latter act seems to be a repeal of the former, (i. e. the § 1. thereof;) being made to supply the deficiencies of it. There is no discretion left by this in the court; the punishment directed in it is peremptory: the former act directs the fine for the first offence, to be "in any sum not exceeding 100*l.*" in this the fine of 500*l.* is peremptory and immitigable, and to be imprisoned for a definite time, and also until the fine be paid; nor are "*the sessions*" inserted. 4 R. v. Cator. Burr. 2026.

By the 14 Geo. 3. c. 71. "if any person shall put on board any vessel not bound directly to some port in Great Britain or Ireland any tools or utensils, or part thereof, proper for the cotton or linen manufactures, he shall forfeit the same, and also 200*l.* § 1.

And by the 21 Geo. 3. c. 37. "if any person shall put on board, or pack, in order to be put on board, any vessel not bound directly to any port in Great Britain or Ireland, or shall bring to any wharf or other place, in order to be so put on board any such vessel, any machine, engine, tool, press, paper, utensil, or implement, or any part, model, or plan thereof, proper for the wollen, cotton, linen, or silk manufactures, one justice, on complaint upon oath by one witness, may issue his warrant to seize the same, together with the package, and other goods packed therewith, (if any such there be), and to bring the person complained of before him or some other justice; and if he shall not give to such justice a satisfactory account of the purpose to which they are intended to be appropriated, the justice shall cause the same to be detained, and bind the party to appear at the next assizes or quarter sessions, and on neglect or refusal so to do, shall commit him to the gaol or house of correction until the next assizes or sessions, and until delivered by due course of law. And on conviction at such assizes or sessions upon indictment or information, he shall forfeit all the said goods, and also 200*l.* and be imprisoned in the common gaol or house of correction for twelve months, and until the forfeiture shall be paid. § 1.

Also by 22 Geo. 3. c. 60. if any person shall contract with, entice, persuade, or endeavour to seduce or encourage any artificer or workman

the said A. B. being a person of a wicked mind and disposition, and not regarding the laws and statutes of this realm, nor fearing the pains and penalties therein contained, within twelve months next before the taking of this inquisition, that is to say, on the said day of in the year of the reign of our Lord the now King, with force and arms, at the parish aforesaid, in the county aforesaid, unlawfully did entice, persuade, and solicit the said C. D. he the said C. D. then and there being a manufacturer, workman, and artificer of Great Britain, in the manufacture of weaving linen cloth, then and there being a manufacture of Great Britain, to go out of, &c. [*Same to the end as the first count.* Third count, "*did endeavour to persuade.*"] And the jurors, Fourth count, &c. do further present, that the said A. B. being a person of a wicked mind, &c. [*as before,*] within twelve months next

concerned or employed, or who shall have worked at, or been employed in, printing calicoes, cottons, muslins, or linens of any sort, or in making or preparing any blocks, plates, engines, tools, or utensils, for such manufactures, to go out of Great Britain to parts beyond the seas, and shall thereof be convicted [*in like manner as is mentioned in the above act of 23 Geo. 2.*] he shall for every artificer forfeit 500*l.* and be committed to the common gaol for twelve calendar months, and until such forfeiture be paid; and in case of a subsequent offence, he shall forfeit for every artificer 1000*l.* and be committed for two years, and until such forfeitures be paid. § 1.

But the prosecution must be commenced within twelve calendar months. § 2.

And by 25 Geo. 3. c. 67. if any person shall contract with, entice, persuade, or endeavour to seduce or encourage any artificer or workman employed or who shall have been employed in the iron and steel manufactures in this kingdom, or in making or preparing any tools or utensils for such manufactures, to go out of Great Britain to parts beyond the seas (except Ireland), and shall be convicted thereof [*in manner above*], he shall for every artificer forfeit 500*l.* and be committed, &c. [*as in the preceding statute.*] § 6.

The prosecution in like manner to be commenced within twelve calendar months. § 7.

By 39 Geo. 3. c. 56. seducing and attempting to seduce soldiers from the kingdom of Great Britain, shall be punished in the same manner as persons seducing, or attempting to seduce, artificers and manufacturers.

The prosecutor is a competent witness, though entitled to a moiety of the penalty on conviction. 3 Esp. R. 68.

before the taking of this inquisition, that is to say, on the said day of in the year of the reign of, &c. with force and arms, at, &c. aforesaid, unlawfully did contract with one C. D., he the said C. D. then and there being a workman in the manufacture of a linen weaver, then and there being a manufacture of Great Britain, to go out of this kingdom of Great Britain into a certain foreign country called America, such foreign country not then being within the dominions of, or belonging to the crown of Great Britain, in contempt, &c. against the form, &c. and against the peace, &c.

On 37 Geo. 3. c. 70. for endeavouring to seduce a soldier from his duty and allegiance, and to mutiny.

County of } That R. P. being a wicked, evil-
(to wit.) } disposed person, after the passing of a
 certain act of parliament made in the 37th year of the reign,* &c. entitled, "An act for the better prevention and punishment of attempts to seduce persons serving in his Majesty's forces by sea or land, from their duty and allegiance to his Majesty, or to incite them to mutiny or disobedience;" and whilst the said act continued and was in force, to wit, on, &c. at, &c. feloniously did, maliciously and advisedly, endeavour to seduce one W. M. he the said W. M. then and there being a person serving in his Majesty's forces by land, from his duty and allegiance to his said Majesty, against the form of the statute, &c. and against the peace, &c. *Second count,* that he feloniously, maliciously, and advisedly did endeavour to incite and stir up the said W. M., he the said W. M. then and there being a person serving in his said Majesty's forces by land as aforesaid, to commit an act of mutiny, and to commit traitorous and mutinous practices, against the form, &c. and against the peace, &c.

* This was originally a temporary act, but was made perpetual by 57 Geo. 3. c. 7. See also 1 Geo. 1. c. 47. and other recent annual mutiny acts, by which a specific penalty is annexed to this offence of soliciting soldiers to desert.

TRAVERSES.

[During the progress of the preceding pages through the press, a statute has been enacted (60 Geo. 3. c. 4.) which has effected considerable alteration in the law respecting Traverses. See *ante*, p. 110.]

It recites that, great delays have occurred in the administration of justice, in cases of persons prosecuted for misdemeanors by indictment or information in his Majesty's courts of King's Bench at Westminster and Dublin, *and by indictment at the sessions of the peace*, sessions of oyer and terminer, great sessions, and sessions of gaol delivery, in that part of Great Britain called England, and in Ireland respectively, by reason that the defendants in some of the said cases have, according to the *present practice* of such respective courts, an opportunity of *postponing their trials* to a distant period, by means of imparlances in the said several courts of King's Bench, and by *time being given* to try in such respective courts of session; and for remedy thereof enacts, that from and after the passing of this act, (24th Dec. 1819,) where any person shall be prosecuted in his Majesty's court of King's Bench at Westminster, or in his Majesty's court of King's Bench in Dublin respectively, for any misdemeanor, either by information or by indictment there found or removed into the same respective courts, and shall appear in term time in either of the said courts respectively in person, to answer to such indictment or information, such defendant upon being charged therewith shall not be permitted to imparle to a following term, but shall be required to plead or demur thereto within four days from the time of his or her appearance; and in default thereof, judgment may be entered against the defendant for want of a plea; and in case such defendant shall appear by his or her clerk or attorney in court, it shall not be lawful for such defendant to imparle to a following term, but a rule requiring such defendant to plead may forthwith be given, and a plea or demurrer to such indictment or information enforced, or judgment by de-

Persons prosecuted in the court of King's Bench for misdemeanors, appearing in court, not permitted to imparle.

Judgment may be entered for want of plea.

Court may allow further time to plead.

fault entered thereupon, in the same manner as might have been done, before the passing of this act, in cases where the defendant had appeared to such indictment or information by his or her clerk in court or attorney in a previous Term. Provided always, that it shall be lawful for the said respective courts, or for any judge of the same respectively, upon sufficient cause shewn for that purpose, to allow further time for such defendant to plead or demur to such indictment or information. § 1 & 2.

Persons in custody for misdemeanors, or held to bail, within 20 days before the sessions, shall plead to indictment, unless a writ of certiorari be delivered.

Secondly, That where any person shall be prosecuted for any misdemeanor by indictment at *any session of the peace*, session of oyer and terminer, great session, or session of gaol delivery within that part of Great Britain called England, or in Ireland, having been committed to custody, or held to bail to appear to answer for such offence *twenty days at the least before the session* at which such indictment shall be found, he or she shall plead to such indictment, and trial shall proceed thereupon *at such same session of the peace*, session of oyer and terminer, great session, or session of gaol delivery respectively, unless a writ of certiorari for removing such indictment into his Majesty's courts of King's Bench at Westminster or in Dublin respectively, shall be delivered at such session before the jury shall be sworn for such trial. And such writ of certiorari may be applied for and issued before such indictment has been found, in the like cases, in the same manner, and upon the same terms and conditions, as if such writ of certiorari had been applied for after such indictment had been found. § 3 & 4.

Certiorari may be issued before or after indictment is found.

In what cases such indictments may be tried at subsequent sessions.

Where any person shall be prosecuted for any misdemeanor by indictment at any session of the peace, session of oyer and terminer, great session, or session of gaol delivery within that part of Great Britain called England, or in Ireland, *not having been committed to custody or held to bail to appear to answer for such offence twenty days before the session* at which such indictment shall be found, but who shall have been committed to custody or held to bail to appear to answer for such offence at some subsequent session, or shall have received notice of such indictment

having been found twenty days before such subsequent session, he or she shall plead to such indictment at such subsequent session, and trial shall proceed thereupon at such same session of the peace, session of oyer and terminer, great session, or session of gaol delivery respectively, unless a writ of certiorari for removing such indictment, &c. shall be delivered at such last-mentioned session before the jury shall be sworn for such trial, any law or usage to the contrary notwithstanding.

Provided always, that nothing in this act contained shall extend or be construed to extend to prevent any indictment, found by a grand jury of any city or town corporate, from being removed, at the prayer of any defendant, for trial by a jury of the county next adjoining to the county of such city or town corporate, pursuant to the provisions of an act passed in the thirty-eighth year of his present Majesty's reign, *to regulate the trial of causes, indictments, and other proceedings, which arise within the counties of certain cities and towns corporate within this kingdom*; and upon such removal, the defendant shall plead, and the trial shall be had according to the provisions of *this act*, in like manner as if such indictment had been originally found by a grand jury of such next adjoining county.

Not to prevent indictments found by a grand jury of any city or town from being removed to an adjoining county to be tried, 38 Geo. 3. c. 52.

Provided also, that it shall be lawful for the court, at any session of the peace, session of oyer and terminer, great session, or session of gaol delivery respectively, upon sufficient cause shewn for that purpose, to allow further time for pleading to any such indictment, or for trial of the same. § 6 & 7.

Court may, on sufficient cause shewn, allow further time for pleading, &c.

In all cases of prosecutions for misdemeanors, instituted by his Majesty's attorney or solicitor general, in any of the courts aforesaid, the court shall, if required, make order that a copy of the information or indictment shall be delivered, after appearance, to the party prosecuted, or his clerk in court or attorney, upon application made for the same, free from all expence to the party so applying; provided that such party, or his clerk in court or attorney, shall not have previously received a copy thereof. § 8.

In prosecutions by the attorney or solicitor general, copy of the information or indictment to be delivered to the party.

In case such prosecution is not brought to trial within twelve calendar months, court may make an order thereon.

Provided that in case any prosecution for a misdemeanor instituted by his Majesty's attorney or solicitor general in any of the courts aforesaid, shall not be brought to trial within twelve calendar months next after the plea of not guilty shall have been pleaded therein, it shall be lawful for the court in which such prosecution shall be depending, upon application to be made on the behalf of any defendant in such prosecution, of which application twenty days' previous notice shall have been given to his Majesty's attorney or solicitor general, to make an order, if the said court shall see just cause so to do, authorizing such defendant to bring on the trial in such prosecution; and it shall thereupon be lawful for such defendant to bring on such trial accordingly, unless a *nolle prosequi* shall have been entered in such prosecution. § 9.

Not to extend to quo warranto actions, &c.

But nothing in this act contained shall extend or be construed to extend to any prosecution by information in nature of a quo warranto, or *for the non-repair of any bridge, or highway.*

CHAPTER V.

THE PRINCIPAL CIVIL BUSINESS OF SESSIONS.

Of those matters of which the Justices in Session have an original Jurisdiction, as well as those which come before them by way of Appeal; viz. Apprenticeships, Bastardies, Articles of the Peace, Vagrants, Convictions, &c. &c.

THE last preceding chapter having been dedicated to the consideration of the *criminal* business of the court of session; or, in other words, to those matters which are brought under its cognizance, *with* the intervention of a jury; those which, by way of contradistinction, have been denominated *civil*, (meaning by that term such as are referred immediately to the exclusive jurisdiction and judgment of the justices, *without* such intervention of a jury), are the subjects of this.

The order of arrangement, in which the matters are to be here treated, must be arbitrary, because that, in which they are actually presented to the several courts of session, are so; the convenience of different places where sessions are holden being influenced by a great variety of local circumstances in the distribution of their business. Apprenticeships are placed first.

There have been divers statutes enacted on the subject of disputes between apprentices and their masters; which give an ultimate jurisdiction to sessions, by appeal from the judgments of individual justices. Those however more properly belong to another part of this work, which treats specifically of appeals. What is proposed to be offered in this place is confined to the original jurisdiction of courts of session over the subject by the statute of Queen Elizabeth.*

* 5 Eliz. c. 4.

APPRENTICESHIPS.

Differences between the master and apprentices by 5 Eliz.

The statute under consideration enacts that, "if any *such* * master shall misuse or evil entreat his apprentice, or the said apprentice shall have any just cause to complain;† or the apprentice do not do his duty to his master, then the said master, or apprentice, being aggrieved, and having cause to complain, shall repair *unto one justice* ‡ of the county, or to the mayor, or other head officer of the city, town corporate, or market town, or other place where the master dwelleth, who shall by his wisdom and discretion, take such order and direction between the master and his apprentice as the equity of the cause shall require; and if for want of good conformity in the master the said justice (or head officer) cannot *compound and agree the matter*, he shall take bond of the said master to appear at the next sessions; § and on his appearance and hearing of the matter there, if it be thought meet to discharge the said apprentice, then the justices, or four of them at the least (1 Q.), or the said mayor, or other head officer, with the consent of three other of his brethren, or men of best reputation in such city, town corporate, or market town, shall have power, in writing under their hands and seals, || to pronounce

* The word *such* refers to the trades enumerated in the preceding sections of the statute, and it was long a doubt, whether it gave jurisdiction to the justices over the apprentices to masters in any other trades; but this question has been set at rest. 2 Lord Raym. 1410.—1. Str. 663.—1 Bott. 573.

+ Unreasonable bodily correction, scarcity of food, and such like personal ill-treatment, present sufficient reasons for complaint on the part of an apprentice; but it has been decided, that these words extend also to neglect of instruction. R. v. Amies, 1 Bott. 574.

‡ These words are only directory. If complied with, the question may then come before the court by appeal.

§ Without these previous steps an application may be made in the first instance to the justices in general sessions, and they have an original jurisdiction over it. R. v. Gill, 1 Str. 143. R. v. Davis, 2 Str. 704.

|| It is bad, if it be not under hands and seals. R. v. Cately, Carth. 198.—Salk. 479.

and declare that they have discharged the said apprentice of his apprenticeship and the cause thereof; * and the said writing being enrolled by the clerk of the peace, or town clerk, amongst the records, shall be a sufficient discharge for the apprentice against his master, his executors, and administrators.† And if the default shall be found to be in the apprentice, then the said justices, or the said mayor, or other head officer, with the assistance aforesaid, shall cause such due correction and punishment to be administered unto him, as by their wisdom and discretion shall be thought meet. § 35. †

BASTARDY.

The filiation of bastards, in the first instance, belonging **Bastardy.** to justices out of session, and all questions touching their settlements appertaining to that portion of this chapter which treats of appeals, all that now presents itself to be discussed, respects the orders to be made for their maintenance, by the court of quarter session.

It being now settled beyond further controversy that

* And even if the master be a freeman of the city of London, and dwell there, and the indentures were enrolled in London, yet the sessions of the county of Middlesex have jurisdiction to discharge, notwithstanding the savings of the *privileges of the city of London and Westminster*, by sect. 40 of this very statute. *R. v. Collingbourne*, 2 Str. 663.

† And *that* even though the master did not appear, being bound over, or summoned so to do.—*Ditton's case*, 2 Salk. 490. It has been much doubted whether the justices have a power to order any return of premium. The most decided case on the subject says they have not. *R. v. Vandeleer*, 1 Str. 69.—But the universal practice is to order such return when it appears reasonable, and it is justified by some authorities. *Du Hamel's case*, 2 Skin. 108.—*R. v. Johnson*, 1 Salk. 67.—2 Bac. Abridg.—1 Bott. 574.—And the necessity of such a power was so clear, that in discharges by justices out of sessions it is given by 32 Geo. 3. c. 57.

‡ These words have been construed to give the sessions power of correction by imprisonment, or other corporal punishment in the house of correction. 1 Saund. 315.—1 Bott. 569.

sessions have the power to make original orders of bastardy, the subject may either come before them on an application after that mode, or by way of appeal from the order of two justices.* In either case a few general rules are necessary to be noticed, and some which are common to both processes.

Proceeding before two justices out of session.

If the proceedings have been according to the statute of Elizabeth,† before two justices out of session, and be brought before the court of quarter session by appeal, they may not only quash the order of the two justices, but they may make an original order on another person.‡ But this exercise of original authority by sessions, it seems, must be under such limitations as may give the party who is to be burdened by it, the same opportunity of resisting it, as he would have had (through the medium of a different process) by appeal from the order of two justices; for it has been decided, that the reputed father shall not, by the proceedings being under the subsequent statute,§ be deprived of all opportunity of resistance to the order. The order therefore cannot be made upon him unless he appear, or at least have been summoned to appear.|| If the justices in session, therefore, quash the order previously made by two justices out of session, and make an original order upon a person who has not been previously charged, if he be not present, they must either respite their proceedings to give him an opportunity of appearing at a future time, or the whole proceeding must begin *de novo*; for otherwise a party unjustly saddled with a burden by two justices under the statute of Elizabeth would have the opportunity of discharging himself by appeal against that order; while another similarly burdened by an original order in session, would be deprived of all relief; no appeal

Father must be summoned.

deprived of all opportunity of resistance to the order. The order therefore cannot be made upon him unless he appear, or at least have been summoned to appear.|| If the justices in session, therefore, quash the order previously made by two justices out of session, and make an original order upon a person who has not been previously charged, if he be not present, they must either respite their proceedings to give him an opportunity of appearing at a future time, or the whole proceeding must begin *de novo*; for otherwise a party unjustly saddled with a burden by two justices under the statute of Elizabeth would have the opportunity of discharging himself by appeal against that order; while another similarly burdened by an original order in session, would be deprived of all relief; no appeal

* See Pract. Expos. title BASTARDS, sect. 3. 1 Bott. 509. 49 Geo. 3. c. 68. by which statute this power of making original orders is fully recognized.

† 18 Eliz. c. 3.

‡ 2 Bulst. 355.—1 Bott. 607.

§ 3 Car. 2. c. 4.

|| 1 Str. 575.—1 Bott. 486.

lying *ab eodem ad eundem*, or from one authority to another with powers exactly similar. *

No appeal *ab eodem ad eundem*.

But if the party having been summoned do not appear, the charge may be taken *pro confesso*, and the justices proceed. †

Non-appearance taken for confession.

But although sessions may make an original order, they have no power by the statute to make the father give security for the performance of that order, as the single justice has, before whom the subject must have come in the first instance. ‡ And if the justices in session do so far exceed their authority as to make the order of filiation, and also one for the performance, the court of B. R. will confirm the former, and quash the latter. §

Sessions cannot require security for performance of order.

No time is limited for these orders either by two justices, or by the quarter sessions; but if the putative father, against whom the examining justice granted his warrant in the first instance, || run away to avoid it, and return at any distant period, and be taken, the order of filiation may then be made. **

No limitation of time.

But if the reputed father had been sent to prison for not finding sureties, and no order was made upon him in six weeks after the birth of the child, he would be entitled to be liberated, under the words of the statute. †† But nevertheless, an order made upon him subsequently would be good, for the reasons before given.

No order made in six weeks after birth, and father in prison.

And if the mother die, or be married before her being delivered of the child, or she appear not to have been with child, the father is entitled, by the statute last referred to, to be released out of custody by one justice, and discharged from his recognizance by the next session. ‡‡

Mother dying or married before delivery.

And if the mother die immediately after delivery, and before any order of maintenance can have been made, her previous examination before the justice will be sufficient evidence to proceed upon in making an order of filiation;

Mother dying before order of maintenance.

* 1 Sess. Car. 179.—1 Bott. 486. † 2 Sess. Ca. 192.—1 Bott. 482.

‡ 6 Term R. 147.—See Pract. Expos. title Bastardy, sect. 3, notes.

§ Ibid. || 6 Geo. 2. c. 31.

** 1 Sess. Ca. 77.—1 Bott. 473.

†† 6 Geo. 2. c. 31. s. 3.

‡‡ Id. s. 2.

for, as was said by Lord Kenyon, in a case of this kind (the other judges concurring) "There is no doubt but that they may proceed to make the order, although the woman be dead; the examination having been taken before a magistrate in the course of a judicial proceeding under 6 Geo. 2. c. 31, is certainly admissible evidence, and being admissible, *and not contradicted by any other evidence*, it seems to be conclusive." *

Appeal upon merits,

If two justices make an order, and the party appeal to the session, the order of such session upon the merits will be final, and no subsequent session can controvert it. †

Upon form only.

But if such session quash it for want of form only, it is no order at-all, and the matter may be proceeded on *de novo*, or the session may amend in point of form, and then proceed upon the merits. ‡

Effect of acquittal upon merits,

And if the session quash the order of justices upon the merits, the defendant is thereby acquitted of the fact altogether. §

Recent alteration, by stat. 49 Geo. 3.

But now, by a recent statute, || no inconsiderable alteration having been made in all the proceedings, as well those before the examining justice, as by sessions, the consequences are, of course, subject to variation, and the provisions of the statute itself are open to observation.

Recital.

It first recites that the provisions of 18 Eliz. are inadequate to the purpose of indemnifying parishes against the charges incurred in apprehending the reputed father, and obtaining the order of filiation, and then enacts, that in whatever way the adjudication be made, whether according to the statute of Eliz. by two justices, or according to the statute of Charles, by the court of quarter session, that the reputed father of a bastard child shall be chargeable not only with the expences incidental to the birth, but with those of his own apprehension, and those incurred by the filiation, not exceeding the whole sum of ten pounds, to be

Incidental expences.

* 5 Term. R. 372.

† 5 Geo. 2. c. 19.

‡ 49 Geo. 3. c. 68.

† Bulst. 255.—1 Bott. 506.

§ 2 Str. 716.—1 Bott. 511.

ascertained by oath before the justices in, or out of, session, making the order. § 1.

It then proceeds to give the like powers, as had been previously given by the former statutes, to justices, to grant their warrants for the apprehension of reputed fathers, to compel them to give security for the indemnifying of their respective parishes, or to abide the order of session, but with this addition, viz. "unless one such justice shall certify in writing to such session that it had been proved before him, upon the oath of one credible witness, that such woman had not been delivered, or had been delivered within one month previous to the day of the session; or, unless two justices of the county, &c. shall certify in writing to the session that an order of filiation had been already made on the person charged; or of the child being dead, or other like sufficient reason why such order is not requisite to be made. In each of which cases *firstly* before mentioned, it shall be lawful for the justices, assembled at such general quarter sessions, or general sessions, of the peace, to respite such recognizance to the then next general quarter sessions, or general sessions, of the peace, to be holden for such county, riding, division, city, or town, corporate, without requiring the personal attendance of the putative father so bound, or of that of his surety or sureties, and in either of the said two *last* mentioned cases, it shall be lawful for the justices, assembled as aforesaid, wholly to discharge such recognizance." § 2.

Certificate that woman is not delivered, or not delivered a month, or an order has been made.

Having thus provided, then, for the additional indemnity of the parish against the *incidental*, as well as the *principal*, expenses, as also for the liberty of the reputed father, in those cases where his appearance before the session is unnecessary, it proceeds to provide a new and summary remedy for the performance of the order, when actually made, as follows:

Summary remedy for performance of the order of maintenance.

"If any reputed father, or any mother, of any such bastard child, on whom any order of filiation or maintenance of any such child shall have been made by the court of quarter sessions, or which shall have been made by two justices, confirmed by the court of quarter sessions, shall neglect or refuse to pay any sum of money which he or she

Recognizance in certain circumstances to be discharged.

shall have been ordered to pay towards the maintenance, or other sustentation for the relief of any such bastard child, by any such order, it shall be lawful for any justice of the county, riding, division, city, liberty, or town corporate, in which such reputed father, or such mother, shall happen to be; and he is required, upon the complaint made to him by one of the overseers of the poor of any parish, township, or place liable to the maintenance or support of such bastard child, or where such bastard child or children shall then be, and upon proof on oath of such order for the payment of such sum of money, and of such sum of money being unpaid, and of a demand of such payment having been made, and a refusal to pay the same, or that such reputed father, or such mother, hath left his or her usual place of abode, and hath avoided a demand thereof being made by such overseer, to issue his warrant to apprehend such reputed father, or such mother, and to bring him or her before such justice, or any other justice of the same county, &c. to answer such complaint; and if such reputed father, or such mother, shall not pay such sum of money as shall appear to the said justice, before whom such reputed father, or such mother, shall be brought, to be due and unpaid, or shall not show to such justice some reasonable and sufficient cause for not so doing, it shall be lawful for such justice, *and he is required to commit such reputed father, or such mother, to the public house of correction, or common gaol, of the said county, to be there kept to hard labour for the space of three months*, unless such reputed father, or such mother, shall, before the expiration of the said three months, pay, or cause to be paid, to one of the overseers of the poor of the parish, township, or place, on whose behalf such complaint as aforesaid was made, the said sum of money so due and unpaid as aforesaid, and so from time to time, and as often as such reputed father, or such mother, shall, in manner aforesaid, neglect or refuse to pay any other sum of money that shall afterwards become due by virtue of, and under such order, after the expiration of, or discharge from, any such former imprisonment as aforesaid." § 3.*

* It has been contended, and, indeed, within the author's knowledge,

The statute then provides that, "all such charges, ex-
 penses, and costs, shall be wholly subject to the discretion
 of the justices, or court of quarter session, who shall make
 out such order of filiation; and the said justices, or court,
 are authorized, if they shall see fit, to allow, and order pay-
 ment of, the whole or any part thereof; provided that they
 shall not, in any case, exceed the sum of ten pounds; and
 for securing the due payment of the same, after such allow-
 ance and order, *all the powers and authorities contained in
 the said act, passed in the eighteenth year of the reign of
 Queen Elizabeth, concerning bastards, shall be observed,
 used, and practised in the execution of this act.*" § 4.

Powers of 18
 Eliz. extended
 to this act.

admitted in practice, that as this statute peremptorily directs the com-
 mitment of the father by the warrant of a justice for his disobedience of
 the order, and *that too toties quoties*, the penalty is thereby complete,
 and the sureties absolved. If it be so, the statute so far from having
 been made, as it is recited, for the further indemnification of parishes,
 places them, in certain points, in a worse situation than they were
 under the former statutes, by exonerating the sureties in consequence of
 the personal punishment of the father. The statute appears to have
 had, in this particular section, two objects in view. *First*, to give the
 justices a power of indemnifying the onerated parish against certain ex-
 penses beyond the mere *accouchement* of the mother, and the main-
 tenance of the child, which they had not by any anterior authority;
secondly, to provide a summary remedy for the punishment of the
 offender, instead of the former circuitous one by indictment for disobe-
 dience. The sureties are not so much as mentioned, and therefore, it
 should seem, were designed to be left in precisely the same situation as
 the former statute of Elizabeth had placed them, intending to make no
 alteration but what is favourable to the interests of the parish, both with
 respect to pecuniary indemnity, and compendious prosecution. If the
 construction above introduced prevail, the statute, instead of being one
 for the further indemnity of parishes, and the punishment of fathers of
 bastard children, may more appropriately be entitled an "*Act for the
 indemnity of sureties, and the punishment of parishes, by diminishing
 their means of indemnity.*"

In the instance, indeed, of an original order being made by the
 justices in session upon a person who has not previously been bound by
 recognizance, with sureties, before a justice *out of session*, the personal
 punishment of the father is all that can be resorted to by the parish to
 compel payment under the order of maintenance; but that consideration
 does not bear upon the subject, where the proceedings are altogether ac-
 cording to the directions of the statute of Elizabeth.

An appeal is then given to the sessions, from the order of two justices, where the parties complaining shall have originally proceeded according to that mode, in the following words:

Appeal.

“ Any person who shall think himself aggrieved by any order made by such justices, under the provisions of this act, and not originating in the quarter session, may appeal to the next general quarter session of the peace, to be holden for the county where such order shall be made, *on giving notice* to such justices, or to one of them, and also to the churchwardens and overseers of the poor of the parish, on whose behalf such order shall have been made, or to one of them, *ten clear days* before such general quarter session, at which such appeal shall be made, of his intention of bringing such appeal, and of the cause and matter thereof, and entering into a recognizance within three days after such notice, before some justice for such county, with sufficient surety conditioned to try such appeal, and abide the judgment and order of, and pay such costs as shall be awarded by the justices at such quarter session, which said justices, at their said session, upon proof of such notice being given, and of entering into such recognizances as aforesaid, shall proceed in, hear, and determine the causes and matters of all such appeals, and shall give such relief and costs to the parties appealing, or appealed against, as they in their discretion shall judge proper; and such judgments and orders therein made, shall be final, and conclusive to all parties concerned.” § 5.

Not to be heard unless the regular notice has been given.

After the passing of this act, no appeal in any case relating to bastardy, shall be brought, received, or heard at the said quarter sessions, *unless such notice shall have been given*, and such *recognizance shall have been entered into* in manner aforesaid according to the provisions of this act.” § 7.

Grounds of resistance to orders of maintenance of bastard children.

It may be useful, here, to notice the general ground on which resistance to the order of justices, by way of appeal, or even to original order of sessions, must generally, from the nature of the subject, be grounded. The mother of the bastard being the only person who can be in complete possession of *all* the circumstances relative to her connections

with the other sex, her declaration on oath, with respect to the father of her child, must of course be deemed conclusive, unless it be rebutted by some legal inference, or by such other testimony as shows that she must necessarily either have been in an error, or have sworn a falsehood; which, generally speaking, can only be done by proof of non-access within time, which would show her *at least* in an error; or by other proof sufficient to throw an entire discredit upon her testimony in the particular case, which would tend to prove her guilty of wilful falsehood.

It would carry us beyond all reasonable bounds, to put every possible way in which the charge of bastardy may be proved, or resisted. A few general rules are all that can be resorted to, conformably with the design. If the person charged as the father be an eunuch,* under puberty,† or absent too long to have possibly had access within the period necessary for gestation,‡ he *cannot* be the father of the child. A married, as well as a single woman, may have a bastard child, and these rules apply to both; for a married woman may have a child within the description of a bastard by the statute, if non-access of her husband within the limits of natural gestation be proved. The *proof* is the only question of difficulty for the court.

It has been repeatedly determined that the wife can be a witness to *no fact whatever* but of incontinence, and *that ex necessitate rei*; but that non-access, and every other fact which may be disputed, must be proved by other witnesses, if proved at all. This is a rule of universal application, to whatever point in the particular case it tend, and whomsoever it is to charge, or to exonerate.§ Having stated *how* proof of non-access is to be given, it is necessary next to show *what* is considered as proof itself of non-access. Actual absence of the husband beyond sea was formerly considered as the criterion with respect to a married woman; but that rule has been considerably relaxed of

Mother of a bastard can only be admitted to prove her own incontinence.

* 4 Vin. 215. 8vo. edit.

† 2 Str. 940.

‡ 2 Str. 925. 1076.—Pract. Expos. *title*, BASTARDY, sect. 1.

§ 2 Sess. Ca. 175.—6 T. R. 330.—8 East's R. 193.

late years.* One of the most recent, and most authoritative, cases on the subject lays it down as follows:—
 “Where a child is born in lawful wedlock, the husband not being separated by divorce, sexual intercourse is presumed, *till* that presumption is encountered by *such evidence* as proves, to the satisfaction of *those who are to decide the question*, that it did not take place, when by the laws of nature the husband *could be* the father of the child. By the term *access*, must be understood *sexual intercourse*, for otherwise a husband might be said to have access because he was in the same place with his wife, although under circumstances which tended to prove that *no sexual intercourse could take place*.”† Thus much is sufficient to observe respecting the testimony of the mother of a bastard child, where perjury in her makes no part of the reputed father’s case, in resistance of the charge, and the consequent order of justices; where the resistance to the order depends on merely impeaching the veracity of the mother, the task of doing so can only be exercised within a small circle, and generally must consist in *proving* that she has made declarations, in an early state of pregnancy, incompatible with the charge under investigation; or that she has been influenced by bribery alone to charge one person, or to acquit another; or, in general terms, such irrefragable testimony of a false and unfounded charge as leaves no room for doubt. These, and such like conclusions, are usually to be elicited only from the mother herself by a cross-examination.

Order of proceeding in appeals.

The last subject relative to the appeal is the mere technical order of proceeding, which is, that upon an appeal against an order of filiation of two justices, the respondent ought to *begin*; that is, ought to commence the controversy, by supporting the order; and *that* too whatever may have been the practice of any particular court.‡

Parents leaving

The order having been made by two justices, and either

* 2 Str. 925.

† By Mansfield, C. J. C. P. In the case of the Banbury Peerage, House of Lords, in 1811.

‡ 12 E. R. 50.

being confirmed, or unappealed from; or having been duly made by the justices in session; it remains only to notice the case of the parents' leaving their bastard children chargeable to their respective parishes, having property by which means such parishes might be indemnified. And it is provided that "as the putative fathers, and lewd mothers of bastard children run away out of the parish; and sometimes out of the county, and leave the said bastard children upon the charge of the parish where they were born, although such putative father or mother have estates sufficient to discharge such parish; it shall be lawful for the churchwardens and overseers of the poor of such parish, where any bastard child shall be born, to take and seize so much of the goods, and receive so much of the annual rents or profits of the lands, of such putative father or lewd mother, as shall be ordered by any two justices toward the discharge of the parish, *to be confirmed at the sessions*, for the bringing up and providing for such bastard child; and thereupon *the sessions may make an order* for the churchwardens or overseers of the poor of such parish, to dispose of the goods by sale or otherwise, or so much of them for the purposes aforesaid, as the court shall think fit, and to receive the rents and profits of the lands, or so much of them as shall be ordered by the sessions." *

Under this statute an order which was made by the justices, that the churchwardens and overseers of the poor should seize of the defendant's goods *what they might judge proper*, to secure the parish from the maintenance of his bastard child, was moved to be quashed, because, by the act they have only authority to make an order to empower the churchwardens and overseers to seize *what the justices shall judge proper*, and not what the churchwardens may judge proper; and for this reason it was quashed. †

* 13 & 14 Car. 2. c. 12.

† 2 Ld. Raym. 858.

ARTICLES OF THE PEACE.

Recognizance
for the peace.

It had been contended that a recognizance taken by a single justice to keep the peace, or be of good behaviour, for any certain period, or for life, or without expressing any specific time, and without fixing any certain period for the offender's appearance, was not legal and sufficient:* but it appears on all hands to have been the constant practice,† and is supported by the greatest authorities.‡ It is true that it has of late been the more usual, and considered as the better way, except under very special circumstances, to bind the party, against whom the peace is required, to appear at the next session of the peace, and in the mean time to keep the peace to the King and all his liege people, especially to the party claiming the security; and though the recognizance for keeping the peace should be removed by *certiorari*, it is no discharge of the obligation to appear.§

The right, however, in the individual magistrate to require securities without restriction as to time, and the other circumstances above referred to, has recently received the most decided confirmation from a decision of the court of B. R.|| It was an action for assault and false imprisonment of the plaintiff, by the defendant, a justice of the peace for the county of Sussex; tried at Sussex assizes, 1817, and on a case reserved, afterwards (January, 23d, 1818), argued at Sergeant's Inn Hall, before the judges of B. R. The warrant of commitment (on failure of finding sureties) to the house of correction, run "him safely to keep *for the space of two years*, unless he shall in the mean time find sureties, &c. for keeping the peace towards our Lord the King, and all his liege people, and especially towards *James Martyn Lloyd*, (the party demanding sureties,) for the space of two years from the date hereof." The only question raised in

* Even Hawkins speaks doubtfully. 1 Hawk. c. 60. R. v. Bowes, 1 T. R. 696.

† Dalt. c. 119. 2 Hale. c. 136.

‡ 4 Black. Com. 253.

§ 2 Hawk. c. 27.

|| Willes v. Bridger, 1 Chit. R. 272.

this case, with which we have any concern in this place, was contained in the words distinguished by italicks; and on that subject, Abbot, C. J., with whom the other judges concurred, delivered his opinion, in substance to the following effect:

“ The authority of a justice of the peace to require, upon due complaint made to him in his judicial character, sureties for the keeping of the peace, and to commit a person to prison for want of such sureties, is not, nor could it be, denied; but it is contended for the plaintiff, that surety can only be required *for appearance at the next session*, and for keeping the peace in the mean time, &c. whereas the warrant under which the plaintiff was committed, commands his imprisonment for two years, unless in the mean time he shall find sureties *for two years* from the date of the warrant. The arguments in support of the limited power of justices to bind are principally founded upon stat. 3 Hen. 7. c. 1. at the close of which, after several enactments relating to the duty of coroners, &c. it is ordained that every justice of the peace who shall take any recognizance for the keeping of the peace, do certify, send, or bring, the said recognizance to the next session of the peace, that so the party bound may be called, &c. But the authority of a justice to take surety for the peace, existed long before this statute, and is derived from the commission of the peace, 1 Edw. 3. c. 16. the authority under which is more fully set forth in 34 Edw. 3. c. 1. by which they are to have power to restrain offenders, to arrest and chastize them, and cause them to be imprisoned, &c. according to law; to arrest all that they *may find by indictment or suspicion*, and to put them in prison; and to take of *all them that be not of good fame, sufficient surety and mainprize* of their good behaviour towards the King, and his people, &c. These two clauses are perfectly distinct; the former of them relating to persons charged with the actual commission of some offence, when the recognizance is only in the nature of bail, to appear at the session, and answer to any charge that may be preferred against them, and *in the mean time* to keep the peace; but the latter

May be for an unlimited time.

is for taking sureties for such time, and in such sum as the justice shall think (in the exercise of a sound and legal, and not a wilful and arbitrary, discretion) fit and proper.

The power of the justices in session to take surety for the peace is derived from the commission, and is in the first clause, by which the power is given to any one justice, and not to two or more, as is done by the second clause, which relates to the taking and trial of indictments, &c.: therefore, if a single justice cannot take security for a longer period than till the next session, it will be difficult to show that a number of justices assembled in session may take it for a longer time.

It may in some cases be expedient that the time, and amount, of the security should be settled by the concurrent sentiments of several persons, rather than by the single opinion of an individual; and therefore we would by no means be understood to disapprove of *the usual practice*, which is to *take the security till the next session only*. On the other hand, expence and trouble are saved by an adjustment of the whole matter in the first instance, and therefore there may be *other cases* in which *this* may be the more convenient course. The present case turns simply upon the *legality* of the warrant, and we are of opinion that it is *legal*."

After this determination, the authority of a justice to take sureties of the peace out of sessions, can be no longer doubtful; but nevertheless, if there be no particular circumstances to make such a private proceeding desirable, the more usual, and apparently the better, mode, is to take the recognizance for "the appearance of the person complained against at the next general, or general quarter, session of the peace; and in the mean time, for his keeping the peace to the King, and all his Majesty's liege subjects, especially to the complainant."

Objections.

It has been said, that, if the offender be a dangerous person, the binding him only to the next session, is insufficient security; and if he be then called upon anew to give a security for further keeping the peace on account of the origi-

nal offence, it is punishing a person twice for one offence. First, it may be answered, that finding sureties of the peace, is merely a proceeding of precaution against the future, and not a punishment for the past, although it be true, that breaches already committed form the ground of apprehension for the future. Secondly, even if it be taken in the light of a punishment, it is likely rather to be diminished, than augmented, by this practice; because it gives the prosecutor the option of being satisfied with a security of shorter duration than would otherwise have been, in all probability, required.

On the presumption, then, that the course last mentioned has been pursued, the person bound must now be called upon his recognizance before the Justices in session,—the court may make proclamation, that “if any man can show cause why the peace granted against *such a one* shall be continued, he shall speak;” and if no person come to demand the peace against him, or to show cause why it should be continued, then the court may discharge him.*

But if a man be bound as aforesaid, and especially to keep the peace towards a certain person, then, though such person come not to desire the peace may be continued, yet the court, by their discretion, may bind him over till the next session, and that may be to keep the peace against that person only, if they shall think good; for it may be, that the person who first craved the peace is sick, or otherwise prevented, so as he cannot come to that session to demand the continuance of the peace further.

If he appear, however, he may then move the court to receive Articles of the Peace against the offender, (with which articles, ready drawn on parchment, he should come prepared, in order that they may be delivered to the clerk of the peace,) and further to bind him by recognizance to the next session:—and so on from session to session, so long as he shall be able to make it appear that his apprehensions continue. Or the justices may bind him for a certain definite period without reference to any succeeding

Defendant called.

May be continued.

Further binding by exhibition of articles.

session, at their discretion, as the individual justice might have done in the first instance.

Swears only to his own apprehension.

Here let it be observed that a person demanding sureties of the peace (whether it be in the first instance before a single justice for immediate security, or by exhibiting articles before the justices in session) swears only to his own apprehensions, of which no other person can form an adequate judgment; from which it has been deduced by the judges, in many cases, as a general rule, that *Articles* of the peace cannot be resisted on any ground, except by showing *direct* evidence of express malice; such as declarations to that effect; but not *inferred* malice, collected from general reasoning, or collateral circumstances; and moreover, that wherever *particular facts* of violence are stated by the complainant, it is not permitted for the defendant to controvert them; for they must be taken to be true, till negatived through the medium of an appropriate prosecution.*

Here it will be proper to introduce some notice of what provocations are deemed sufficient cause for demanding sureties of the peace, as well as respecting the persons at whose suit, and against whom they ought to be granted, since these considerations are equally applicable to such demand before justices *out of* session, and by articles exhibited in session.

For what cause to be granted.

By the commission of the peace, one or more justices have power "to cause to come before them all those who, to any of the King's people concerning their bodies, or the firing of their houses, have used threats, to find sufficient security for the peace, or their good behaviour, towards the King and his people; and if they shall refuse to find such security, to cause them in the King's prisons to be safely kept, until they shall find such security."

Fear of corporal hurt, or burning his house.

It seems clear that wherever a person has just cause to fear that another will burn his house, or do him a cor-

* 13 E. R. 171.—See this subject at length, Pract. Expos. *Title, PEACE, SURETY FOR*, sect. 1. The three great cases in which is the doctrine here insisted on, are those of Lady Vane, in Str. 1202; the next the Countess of Strathmore's case, in 1 T. R. 606; and R. v. Dogherty, in 13 E. R. 171.

poral hurt, or that he will procure others to do so, he may demand the surety of the peace against such person, and that every justice of the peace is bound to grant it, upon the party's giving him satisfaction upon oath that he is actually under such fear, and that he has just cause to be so, and that he doth not require it out of malice or vexation.*

Also it seems that he who is threatened to be *imprisoned* Being threatened with imprisonment. by another has a right to demand the surety of the peace; for every unlawful imprisonment is an assault and wrong to the person of a man. And the objection that one wrongfully imprisoned may recover damages in an action, and therefore needs not the surety of the peace, is as strong in the case of battery, as in that of imprisonment; and yet there is no doubt, but that one threatened to be beaten may demand the surety of the peace. †

But if the justice shall perceive that surety is demanded Where demanded through malice or vexation. merely of malice, or for vexation only, without any just cause of fear, it seems he may safely deny it: here, however, the justice shall do well to persuade him, and to show him the danger of his oath which he is to take; but yet if he will not be persuaded, but will take his oath that he is in fear, where indeed he neither doth fear, nor hath cause to fear, this oath shall discharge the justice, and the fault shall remain on such complainant.

Also if a man will require the peace, because he is *at variance* or in *suit* with his neighbour, it shall not be granted. ‡

But this fact must appear directly from the declarations of the party, for otherwise the justice, collecting such motives inferentially, will take on himself a responsibility not justified by the cases just cited.

But all the authorities agree that fear lest another will hurt his servants, or his cattle, or other goods, is not sufficient ground for requiring surety of the peace. Not for servants, goods, or cattle,

But it is otherwise as to his *wife* or *child*, for he may For wife or child. crave the peace at the justice's hands, by the words of the commission, and the justice ought to grant it. §

* 1 Hawk. c. 60.

‡ Dalt. c. 116.

† 1 Hawk. c. 60.

§ Dalt. c. 116.

If the children be under the age of discretion, there can be no doubt respecting the parent's claim on the authority of the justice for protection, on his (the father's) oath.

Must be a fear of present or future danger.

The surety of the peace shall not be granted, but where there is a fear of some present, or future danger, and not for any breach of the peace that is past; for his surety of the peace is only for the security of such as are in fear: but the party wronged may punish the offender by indictment; and the justice may bind over the affrayer to answer unto the indictment.

May be demanded by any person.

It seems to be agreed that all persons whatsoever, under the King's protection, being of *sane memory*, whether they be natural and good subjects, or *aliens* or *excommunicate*, or attainted of *treason*, have a right to demand surety of the peace. And it is certain a *wife* may demand it against her husband, and that a husband also may have it against his

Against whom.

wife. And there is no doubt but it ought upon cause of complaint, to be granted by any justice of the peace, against any person whomsoever, under the degree of nobility, whether he be a magistrate or private person, and whether he be of full age, or under age. But infants and *femes covert*s ought to find security by their friends, and not to be bound themselves. And the *safest* way of proceeding against a *peer*, is by complaint to the Court of Chancery or King's Bench.*

Infants, *femes covert*s, and *peers*.

Practice of sessions as to continuance of binding.

The usual practice of courts of quarter session, we have seen, is to continue a recognizance for keeping the peace, from session to session, until it be discharged. †

That of the court of King's Bench is to continue the person bound to keep the peace upon his recognizance for twelve months; and if no indictment be, in the interim, preferred against him, to discharge it at the expiration of that time. ‡ But they are not confined to any particular period, for they will require bail for such a length of time as they shall think necessary for the preservation of the peace. §

* 1 Hawk. c. 60.

† 2 Str. 335.

‡ 4 Bac. Ab.

§ R. v. Bowes, 1 T. R. 696.

This seems likewise to be the practice of the Court of Of R. B. and Chancery; for upon a motion to discharge a writ of *supplicavit*, it was said by Lord Macclesfield, chancellor, "the application is too early; let the party stay till a year be expired, and in the mean time let him take care to behave peaceably."*

And if a man be bound to the peace during his life (which, as we have already seen, a justice in his discretion, or a court of session, upon sufficient cause, *may* legally do,) or generally without any time or day limited; in such case neither the King, the justice, the party, nor the sessions, can discharge this recognizance during the life of the party so bound, by release or otherwise.†

But if the person who has entered into a recognizance for keeping the peace die, the recognizance may be discharged.‡ How recognizance may be discharged.

Also the demise of the King is a discharge of a recognizance for keeping the peace; for as the condition is to *keep our peace*, his successor cannot take advantage of a breach. §

But it seems, according to the better opinion, that a release from the person upon whose complaint it was entered into, is in no case a discharge of a recognizance for keeping the peace; for, as the recognizance was entered into to the King, and not to the subject, it is not in the power of that subject, who is no party to it, to discharge it; however, such a release may be a good inducement to the court, to which such a recognizance shall be certified, to discharge it, if it be within their power. ||

After the condition of a recognizance for keeping the Pardon. peace is broken, the King may pardon the forfeiture; but the King cannot release the condition before it is broken; because the person upon whose complaint the recognizance was entered into, has an interest in the condition. **

The demand of a recognizance for surety of the peace Application

* 2 Peere Wil. R. 202.

† Lamb. 113; Dalton, c. 629.

‡ 1 Hawk. c. 60.

§ Ibid.

|| Ibid.

** Ibid.

for recogni-
zance may be
originally to the
justices in ses-
sion.

May be taken
before a single
justice.

has been treated of as being *first made* before a single justice, and *continued* by articles exhibited before the justices in session. It must not be understood, however, to come before the latter in the manner of an appeal from the former, for there is no reason whatever, why an original application should not be made to the justices in session, if the party complaining consider such application sufficiently early for his protection. In that case, a warrant must of course proceed from the bench, against the offender; but the recognizances, both for the immediate preservation of the peace, and for his future appearance at the next session, may be taken before a single justice, if not apprehended before the adjournment, or termination, of the court.

The court of B. R. rejected articles of the peace with a person residing in a distant part offered to swear against a person resident in the same place, saying "he might have gone before a justice of the neighbourhood and claimed the security of the peace there. *"

If the warrant for apprehending the offender go, in the first instance, from the justices in session assembled, it should be in the following form, or to the like effect, in the name of the King, but under the teste of the chairman and one, or more, of the other justices.

County of..... } George the Third, by the Grace of God,
(to wit.) } of the united kingdom of Great Britain and
Ireland, King, Defender of the Faith, and so forth; to our
Sheriff of our county of..... the high constable of the hundred
of..... the petty constables of the town of..... and to all
and singular our bailiffs and other ministers in the said county
..... greeting. FORASMUCH as P. O. of..... in the said
county, yeoman, hath personally come before A. B. and other
our justices assigned to keep the peace within the county afore-
said, and also to hear and determine divers felonies, trespasses,
and other misdemeanors in the said county committed, and hath
taken a corporal oath that the said P. O. is afraid that D. D. of
..... in the said county, yeoman, will beat [wound, maim, or
kill] him [or burn his house,] and hath prayed surety of the
peace [or of the good behaviour, *if it be so*] against him the

* R. v. Waite, Burr. R. 780.

said D. D. Therefore we command and charge you, jointly and severally, that immediately upon receipt hereof, you omit not, by reason of any liberty within the county aforesaid, but that you take the aforesaid D. D. if he can be found in the county aforesaid, and bring him before the said A. B. and other our justices so as aforesaid assigned to keep the peace within our county aforesaid, if they shall be then sitting; and if not, then before some one or more of our said justices in and for our county aforesaid, to find sufficient surety and mainprize, as well for his personal appearance at the next general quarter session of our peace, to be holden at or elsewhere, in and for the said county, as also for our peace in the mean time to be kept towards us and all our liege people; and more especially towards the said P. O.; that is to say, that he the said D. D. shall not do, nor by any means procure, or cause to be done, any of the said evils to any of our said people, and particularly to the said P. O.; [or *if it is for the good behaviour* as also for his good behaviour, in the mean time, toward us and all our liege people; and more especially towards him the said P. O. &c. &c.]

“If any party who is called at a session of the peace upon a recognizance for keeping the peace, make default, the default shall be there recorded, and the recognizance, with the record of the default, shall be sent and certified into the Chancery, or before the King in his bench, or into the King’s Exchequer.” *

Default to be recorded and certified.

However, if the party have any good excuse, such as sickness, for his not appearing, it seems that the sessions are not bound peremptorily to record his default, but may equitably consider of the reasonableness of such excuse. † This doctrine has, indeed, been doubted, ‡ but general practice is conformable with the position; and as the recognizance may be taken by a single justice at any time, so soon as the offender is able to attend, a respite of proceedings by the session, till that opportunity arrives, seems only consistent with justice and humanity.

May under circumstances be respited.

But there is no doubt but that it may be forfeited by any actual violence to the person of another, whether it be done by the party himself, or by others through his procurement, as manslaughter, rape, robbery, unlawful imprisonment,

May be forfeited.

* 3 Hen. 7. c. 1.

† 1 Hawk. c. 60.

‡ Dalt. 119.

and the like. * And even by threatening to do any act of violence against another *in his presence*; and it is said, in *his absence* also, if accompanied by lying in wait to execute it. †

And the justices cannot in any case proceed against the party for a forfeiture of his recognizance, either in respect of his not appearing, or breaking the peace; but that the recognizance itself, with record, or default of appearance, ought to be removed into some of the Courts at Westminster, who shall proceed by *scire facias* upon such recognizance, and not by indictment. ‡

Proceedings
when forfeited.

And so it ought to be, if it be presented by the jury, or grand inquest, that the party hath forfeited his recognizance by breach of the peace. §

* 1 Hawk. c. 60.

† Dalt. 121. R. v. Mendez, Str. 472.

‡ 1 Hawk. c. 60.

§ Lamb. 570.—Dalt. 119.

VAGRANTS.

The disposition of vagrants constitutes, especially in populous and manufacturing districts, no inconsiderable portion of the business of a quarter session of the peace. Idleness in any of the members of a community is a disadvantage to such community, because on the diffusion of active and productive labour depends its vigour and its wealth. More weight has been attached to these axioms in this kingdom perhaps than in most others, whence the numerous statutes that have been enacted against this source and root of almost every evil. The laws against vagabonds may be traced up as high as the reign of Hen. II. Under that of Queen Elizabeth they became numerous and more systematic, because the dissolution of monasteries by her father had thrown on the bounty of the public a numerous herd of beggars, who had before been under the protection of those communities. The 17 Geo. 2. c. 5. commonly called the Vagrant Act, extended and improved in some particulars by subsequent statutes, is, at this day, the principal foundation, on which all the proceedings against beggars, (or as they are more technically denominated, *Vagrants*) of all descriptions, as well before magistrates out of sessions as before courts of quarter session, are erected. This statute divides the objects of it into three classes, viz. 1st, Idle and disorderly persons. 2d, Rogues and vagabonds. 3d, Incorrigible Rogues.

I. *Idle and disorderly Persons.*

Idle and disorderly persons are thus described by it.

1. All persons who *threaten* to run away, and leave their wives or children to the parish. Persons threatening to run away.
2. All persons who shall unlawfully return to the parish or place from whence they have been legally removed by order of two justices, without bringing a certificate from the parish or place whereunto they belong. Returning to the parish removed from.
3. All persons who, not having wherewith to maintain themselves, live idle without employment, and refuse to Refusing to work.

work for the usual and common wages given to other labourers in the like work, in the parishes or places where they are.

Begging.

4. All persons going about from door to door, or placing themselves in the streets, highways, or passages, to beg or gather alms *in the parishes or places where they dwell*.

Neglecting to work and to provide for their families.

And 5. (By 32 Geo. 3. c. 45. § 8.) All persons who by their wilful default and neglect permit their wives and children to become chargeable to their parishes or places; who either do not use proper means to get employment, or being able to work, do neglect to work, or spend their money in alehouses or places of bad repute, or in any other improper manner, and do not employ a proper proportion of the money earned by them towards the maintenance of their wives and families.

II. Rogues and Vagabonds.

Rogues and vagabonds are these that follow :

Gathering alms under pretended losses.

1. All persons going about as patent gatherers, or gatherers of alms, under pretences of loss by fire, or other casualty.

Collectors for prisons.

2. Persons going about as collectors for prisons, gaols, or hospitals.

Fencers.

3. Fencers.

Bearwards.

4. Bearwards.

Common players.

5. Common players of interludes, and all persons who shall for hire, gain, or reward, act, represent, or perform, or cause to be acted, represented, or performed; any interlude, tragedy, comedy, opera, play, farce, or other entertainments of the stage, or any part therein, not being authorized by law.

Minstrels.

6. Minstrels.

Jugglers.

7. Jugglers.

Gipsies.

8. All persons pretending to be gipsies, or wandering in the habit or form of *Egyptians*.

Fortune-tellers.

9. Or pretending to have skill in physiognomy, palmistry, or like crafty science, or to tell fortunes.

Using subtle craft.

10. Or using any subtle craft, to deceive and impose on, any of his Majesty's subjects.

11. Or playing, or betting at, any unlawful games. Playing or betting.

12. All persons who run away, and leave their wives or children, whereby they become chargeable to any parish or place.* Running away.

13. All petty chapmen, and pedlars, wandering abroad, Pedlars un-
not being duly licenced, or otherwise authorised by law. licenced.

14. All persons wandering abroad, and lodging in ale houses, barns, out-houses, or in the open air, not giving Persons not
a good account of themselves. giving a good
account of
themselves.

15. All persons wandering abroad and begging, Beggars, pre-
tending to be soldiers, mariners, or sea-faring men. † tending to be
soldiers, sea-
men, &c.

16. Or pretending to go to work in harvest. † Pretending to
go to work in
harvest.

17. If any one keep an office for the sale of tickets in the public lottery, without a licence from the stamp office, he shall forfeit 100*l.* And if any person shall sell the chance or share of a ticket for a less time than the whole time of drawing, or shall insure for, or against, the drawing of any ticket, or shall receive any money to return money or goods upon any contingency depending upon the tickets in the lottery, he shall forfeit 50*l.* by 22 Geo. 3. c. 47, and persons guilty of any of the preceding offences may also be proceeded against as rogues and vagabonds, by 27 Geo. 3. Illegally deal-
ing in lottery
tickets or
shares.

* On the subject of persons threatening to run away, and actually running away, and leaving their families chargeable, there are no less than four statutes in force, viz. 1 J. c. 4.—5 Geo. 1. c. 8.—17 Geo. 2. c. 5.—and 32 Geo. 3. c. 45.

† Persons committing acts of vagrancy *under pretence* of being soldiers, &c. but not being really such, are undoubtedly still subject to the punishment of vagrants. But real soldiers, &c. in a state of vagrancy from accident or necessity, who were punishable by the 39 Eliz. c. 17. and the wives of soldiers, moreover, under the circumstances therein mentioned, are relieved against the provisions of the vagrant laws by the annual mutiny acts, and by 43 Geo. 3. c. 61. *sub modo*.

‡ This provision was directed against persons who under pretence of seeking harvest work, left their own parishes, and by an inhabitancy of forty days in some other place more agreeable to them, acquired settlements, which they might formerly have done under the 18 & 14 C. 2. c. 12; whereby parishes that had received no benefit from their labour, were oftentimes burthened with their maintenance.

c. 1; but if they are convicted as rogues and vagabonds, they shall be discharged from the pecuniary penalties.

All beggars.

18. And all other persons wandering *abroad* and begging, shall be deemed rogues and vagabonds.*

Persons having
a picklock
key, &c.

19. Any person apprehended, having upon him any picklock key, crow, jack, bit, or other implement, *with an intent feloniously to break and enter into any dwelling-house, warehouse, coach-house, stable, or out-house, or who shall have upon him any pistol, hanger, cutlass, bludgeon, or other offensive weapon, with intent feloniously to assault any person; or shall be found in or upon any dwelling-house, warehouse, coach-house, stable, or out-house, or in any enclosed yard or garden, or area belonging to any house, with an intent to steal any goods or chattels.* 23 Geo. 3. c. 88. †

20. Suspected persons and reputed thieves frequenting the *Thames*, and the quays and warehouses, &c. adjoining, with a felonious intent. 39 & 40 Geo. 3. c. 87.

21. Persons making signals by fires on the coast to smuggling vessels. 42 Geo. 3. c. 82.

III. *Incorrigible Rogues.*

Incorrigible rogues are thus described :

1. All end gatherers offending against the statutes of the 13 Geo. 1. being convicted of such offence, which offence is this, viz. the collecting, buying, receiving, or carrying any ends of yarn, wefts, thrums, short yarn, or other refuse of cloth, drugget, or other woollen goods, whereby abuses might be committed in the woollen manufacture.

2. All persons apprehended as rogues and vagabonds,

* *Abroad* means *out of* their own parishes ; for we have seen by the last section, that if they commit the offence *within* their own parishes, it only incurs the punishment due to idle and disorderly persons.

† The conviction of this instance of vagrancy must *state* that these specified implements, or some of them, were found upon the prisoner *at the time of his apprehension*. *R. v. Brown*, 8 T. R. 26. The *intent* must in this instance, like most others, be a conclusion of fact from the evidence ; but the possession of the instruments named, if unexplained, is presumptive proof of the intention.

and escaped from the persons apprehending them; or refusing to go before a justice; or to be examined on oath before such justice; or refusing to be conveyed by such pass as is herein-after directed; or knowingly give a false account of themselves on such examination, *after warning given them of their punishment.*

3 All rogues or vagabonds who shall break or escape out of any house of correction before the expiration of the term, for which they were committed or ordered to be confined by this act.

4. All persons who, after having been punished as rogues and vagabonds, and discharged, shall offend again in like manner.* All these shall be deemed incorrigible rogues. § 4.

5. Any person convicted of a *third* offence against the fourth section of the 6 Geo. 3. c. 48, respecting the destroying of underwood.

It is with the two last mentioned descriptions of offenders; viz. rogues, and incorrigible rogues; that justices in session are immediately concerned, and the provisions of the statute which brings the subject under their cognizance are the following, (after enacting, respecting *idle and disorderly* persons, that "It shall be lawful for one justice to commit any *idle and disorderly person, being thereof convicted* before him upon his own view, or confession, or oath of one witness, to the house of correction, to be kept to hard labour, for not exceeding one month,") it proceeds to the punishment of these other two descriptions of vagrants, thus:

"And if the person apprehended be a *rogue and vagabond*, the justice shall order him to be publicly whipped by the constable, or other person to be appointed by the constable of the parish or place where such person was apprehended; or shall order him to be sent to the [common gaol, 27 Geo. 3. c. 11, or] house of correction till the next sessions, or for any less time, [such less time not being for less than seven days, 32 Geo. 3. c. 45. § 1.] as such justice shall think proper." 17 Geo. 2. c. 5. § 7.

* i. e. As a rogue and vagabond, Ballie's case, Leach, 400.

Power of the sessions.

"Where any offender against this act shall be committed to the house of correction till the next sessions, and *the justices at such sessions shall* on examination of the circumstances of the case, *adjudge* such person a *rogue or vagabond*, or an *incorrigible rogue*,* they may order *such rogue or vagabond*, to be *detained in the house of correction* to hard labour for any further time not exceeding six months, and such *incorrigible rogue* for any further time not exceeding two years, nor less than six months; and, during the time of *such person's* confinement, to be whipped in such manner, and at such times and place, as they shall think fit; and such person may, if the sessions think convenient, afterwards be sent away by a pass; and if such person, being a male, is above the age of

* Previous to the application of decided cases to points of difficulty arising out of the different statutes on the subject of vagrancy, it is necessary to submit a very few observations, of a general nature, on the interpretation of the 17 Geo. 3., which must be considered as the foundation of all the authority of justices over all those who come within the common description of "*vagrants*." It seems decided by the case of *R. v. Rhodes*, (4 T. R. 220.) that every commitment of every vagrant, whether for a determinate period, or till the next session, is a *commitment in execution, on a previous conviction*. By *R. v. Patchet*, (5 E. R. 339.) wherein it is asserted by Counsel, and not contradicted by the Court; and by the actual judgment in *Bailie's case*; (*Leach*. 400.) it would seem that only *idle and disorderly persons*, and *rogues and vagabonds*, the two first mentioned description of vagrants in the statute, can be actually punished or committed in execution by individual magistrates, and that incorrigible rogues, the third description, are to be committed *for trial and punishment* before the justices in session. If this be so, the commitments of *these* cannot be commitments in execution. Then, again, it appears by *R. v. Elwell*, (2 Str. 794.) and other cases, that the court of session cannot proceed to inquire respecting these kinds of offences upon the mere *commitments*, but that there must be convictions returned as the foundation of their jurisdiction. These different positions cannot all stand together. The least irreconcilable conclusion, therefore, may perhaps be, on a deliberate view of the statute itself, and these conflicting authorities, that the sessions cannot proceed beyond the offence charged on the face of the conviction respecting rogues and vagabonds, the commitments of *such* being clearly in execution of a sentence already passed; but that, with respect to incorrigible rogues, they are for trial before the sessions, and that trial is intended by the statute to be on the commitment only.

twelve years, the court may, before he is discharged from the house of correction, send him to be employed in his Majesty's service by sea or land; and if such *incorrigible rogue*, so ordered by the sessions to be detained in the house of correction, shall break out or make his escape, or *shall offend again* in like manner, he shall be guilty of *felony*, and be transported for seven years."* 17 Geo. 2. c. 5. § 9.

On the construction of this statute two points have been decided, which had been considered doubtful: 1st. The words "such persons," refer to any description of offender mentioned in the beginning of the clause, whether he be only a "*rogue and vagabond*," or an "*incorrigible rogue*," and therefore the punishment directed applies to one, as well as the other; 2dly. That where the sessions sentence such offender to be *employed in his Majesty's service*, they must specify the particular service, whether by land, or sea. †

"Where any vagrants have been committed to the house of correction till the next sessions, if, on examination of such persons, no place can be found to which they may be conveyed, the sessions shall order them to be detained and employed in the house of correction, until they can provide for themselves, or until the justices in sessions can place them in some lawful calling, as servants, apprentices, soldiers, mariners, or otherwise, either within this realm, or in the plantations in America." § 28.

"And whereas doubts have arisen, and may arise, where authority is given to any justice or justices of the peace to commit offenders to the house of correction for offences cognizable before them out of the general or quarter session of the peace, how long offenders may be there detained, and in what manner treated, where the time and manner of their punishment is not by law expressly directed, limited,

* The statute 13 & 14 Car. 2. c. 12. authorized the justices in sessions to transport all such rogues, vagabonds, and sturdy beggars, as should be duly convicted, and adjudged to be incorrigible; but this power seems to be virtually repealed by the statute 17 Geo. 2. c. 5. having inflicted a less severe punishment on such offenders in every instance but one, and in that one having specifically directed the same punishment as had been inflicted by the former statute on all.

† R. v. Patchet, 5 E. R. 539.

or appointed; it is enacted, that where any offender shall be committed as aforesaid by virtue of any law now in being, or hereafter to be made, and the time and manner of their punishment is not expressly limited, directed, and appointed; the said justice or justices shall commit such offender to the house of correction, there to be kept to hard labour, *until the next general or quarter sessions, or until discharged by due course of law*; and it shall be lawful for two justices (of which the justice who committed such offender to be one) to *discharge* * the said offender *before* the said sessions if they see cause; and if he shall not be so discharged, the said sessions may either discharge him, or continue him in custody for such time as they shall see fit, *not exceeding three months.*" § 32.

Construction
doubtful.

To what particular offences, described in this statute, the punishments directed by this 32d section were intended to be applicable, it may be difficult to imagine. All the offences mentioned have specific punishments annexed to them; and if the provisions of this section apply to them also, it seems to make the punishments inconsistent one with another. As for example,

The 7th section gives an option to the committing magistrate to commit the rogue and vagabond either until the next sessions, *or for any less time*, as such justice or justices shall think proper: but if the 32d section apply to these rogues and vagabonds, it takes away the option before given to the committing magistrate, and compels him to commit the offender until the next sessions at all events; then immediately after comes the power to two justices to undo what has been done, by absolutely discharging the offender before the sessions, if they think proper: but, according to the construction put on the 7th clause, the commitment is in execution, and, of course, the offender cannot be liberated until the time mentioned in the warrant of commitment is expired.

Also this same 32d section authorizes the justices, at the sessions, to continue the offender in custody for a further

* Not bail him, for it is a commitment in execution. *R. v. Brooke*, 2 T. R. 190.

time, *not exceeding three months*, without any superadded punishment. But the cases of a rogue and vagabond, and of an incorrigible rogue, had been already provided for in the 9th section, which gives the sessions authority to continue the party in custody for a further time, viz. if a rogue and vagabond, *not exceeding six months*, and if an incorrigible rogue, *not exceeding two years, nor less than six months*; * and in both cases to order the party to be whipped; and also to be employed, at the time of his discharge, in his Majesty's service either by sea or land.

After there have been, as is the fact, judicial determinations on the construction of this clause, it cannot be said How reconciled. that it does not apply to the offences stated in the 7th and 9th sections; but it has not been construed to controul the powers given by the former sections, and the effect of these determinations is only, that the warrant of commitment of a *rogue and vagabond* must state a previous conviction, as well as that of an *idle and disorderly person*; and that if the commitment be till the sessions, it must conclude with the words, "or till discharged by due course of law," that is to say, a discharge by *two justices*, under the 32d section.

And as this 32d section has been construed not to controul the power of single justices given them by the 7th, it may be fairly inferred that it does not controul the power given by the 9th to the sessions.

After whipping or confinement as aforesaid, *the justice* Vagrant pass, after sentence. may, if he think convenient, "by a pass under hand and seal, cause the vagrant to be conveyed to the place of his last legal settlement; but if it cannot be found, then to the place of his birth: or, if he be under the age of fourteen years, and have any father or mother living, then to the place of the abode of such father or mother, there to be delivered to such father or mother." 17 Geo. 2. c. 5.

But whereas the present mode of conveying vagrants in May be conveyed by masters of houses of correction. the custody of a constable is frequently insufficient, it is enacted, "that the justices *in sessions* may order that all rogues and vagabonds, apprehended within their liberties, and ordered to be conveyed by pass, shall be conveyed by

* See *ante*, p. 516. notes

the master of the house of correction, or his servants, or by a constable, as they shall think proper; and they may make an order, that all constables, to whom rogues and vagabonds brought from another county are delivered, shall forthwith convey them to the nearest house of correction within their liberty, to be afterwards removed by such master or his servants as aforesaid, and according to the provisions of the aforesaid act." 32 Geo. 3. c. 45. § 5.

Penalties for
neglect of duty,
&c. in gaolers
and constables.

And if any petty constable, or governor of any house of correction, shall counterfeit any such certificate or receipt, or knowingly permit any alteration to be made therein, he shall forfeit 50*l*. And if he shall not convey, or cause to be conveyed, such vagrants, or not deliver them to the proper person; or if any constable shall refuse to receive any such person, or to give such receipt, he shall forfeit 20*l*. by distress and sale, by warrant of the justices in sessions, where the offence shall be committed; half to the informer, and half to the treasurer, to be applied by him as part of the public stock; returning the overplus upon demand, charges of distress being first satisfied. 17 Geo. 2. c. 5. § 18.

To defray the expenses of conveying vagrants, and all other expenses necessary for the execution of the statutes respecting them, the justices in sessions may cause such sums as shall be necessary to be raised in the same manner as the county rate. 17 Geo. 2. c. 5. § 33.

"But where, by any special acts of parliament, the charge of conveying vagrants is directed to be defrayed in any other manner, in any cities or towns, the same shall continue to be so defrayed." § 27.

Convicts, &c.
to be conveyed
by passes.

Moreover, "any judge of assize, or justices in session, or any justice of the peace, may order *any convict* upon his discharge from prison, and also *any person who shall be acquitted* at the assizes or sessions, *discharged by proclamation or otherwise*, to be conveyed by a vagrant pass, as directed by 17 Geo. 2. who shall by himself or any other person, apply to such court or justice, to be so conveyed; and the judge, justices, or justice, aforesaid, shall certify in such pass, that the person so conveyed was discharged from prison, or acquitted, or otherwise discharged, at the assizes or sessions, as the case may be, for which pass no fee shall be paid."

APPEALS.

We come now to the consideration of appeals; generally Appeals. one of the most intricate, as well as important, of the subjects submitted to sessions of the peace. The most cursory acquaintance with any book on the office and duties of a justice of the peace, must be sufficient to impress a conviction that it would be a most unprofitable labour to introduce, under this division, all the subjects indiscriminately, on which an Appeal lies to the sessions, from the orders or adjudications of individual magistrates. No part of the whole system can exhibit a better proof of this position, than that which embraces the differences between masters and their workmen, in most of our trades, which are respectively regulated by an immense number of statutes; many of which are very rarely called into use, but all of which are to be met with in books of the kind which have been alluded to, as occasion may require. It is proposed, therefore, to confine what is advanced *here* on the subject of Appeals, to those which arise out of the most ordinary and fruitful sources of them. But, first, it is becoming that Appeals in the abstract, and in their general regulation, before we descend to consider an application of them to particular subjects, should receive some attention. What they are.

Appeal, according to the general use of the word, signifies a complaint to a superior court, of an injustice done by an inferior one; and in this sense it is used when applied to the reference from the orders, or convictions, of justices *out of sessions*, to the judgment of the court of session; the only application of it with which we have any concern here. It differs from the remedy by *certiorari*, of which hereafter; Differs from remedy by certiorari. not being, as the other is, a common law right for the purpose of obtaining the judgment of a superior tribunal, but a qualified right given by special provision of statute.

The first thing necessary to be observed upon the *general* view of Appeals, is, that where an authority is conferred upon the court to try them, an incidental authority accompanies it of adjournment, if necessary for the advancement Authority to adjourn the consideration.

of justice;* and this even though the statute giving the Appeal direct the justices *of the said session* to determine it: but this is on the supposition that the Appeal is regularly before them, for if any previous steps are made necessary by the statute as the condition of the right of Appeal, and they have not been complied with, they cannot adjourn the hearing of what is not regularly before them. †

“ Upon appeals to be made to the session against judgments, or orders, the justices shall cause any defect of form in such original judgments, or orders, to be rectified and amended, and then shall proceed upon the merits.” ‡ On this subject it has been determined, First, that by “ *defects in matters of form*,” which the justices are empowered to mend, are intended *merely defects or mistakes in form apparent upon the face of the order*, but not matters of substance. §

It has been found impossible to lay down precise rules for determining the exact boundary between matters of form, and those of substance, and on that account this regulation of the stat. was, on one occasion, called by Lord Kenyon, Ch. J. “ almost a dead letter.” ||

The most correct definition of matters of form is, perhaps, “ that which appears palpable, without examination.” **

Distinction
between orders
and convictions.

A few words now upon the distinction between appeals against the *orders* of justices, and those against their judgments and *convictions*. *Orders*, which have been said to partake most of the nature of convictions are: ††

1. Orders of bastards under 18 Eliz. c. 3.
2. Against persons continuing to keep a public-house, after an order of justices to suppress it, under 5 & 6 Edw. 6.
3. Against tenants fraudulently removing goods to avoid distress, under 11 Geo. 2. c. 28.

To these, however, for our *present purpose*, must be added

* R. v. Wiltshire (justices), 19 E. R. 352.

† R. v. Justices of Oxfordshire, 1 M. & S. 448.

‡ 5 Geo. 2. c. 10.

§ 2 Bott. 828. Const. Edit.

|| Cald. Ca. 248.

** Burr. S. C. 168.

†† Pal. Con. 99.

several others; as, for example, those which respect the settlements, maintenance, and removal of the poor.

Those against pawn-brokers refusing to deliver up pledges, under 39 & 40 Geo. 3. c. 99, and many more.

The chief, if not the only, reason for noticing any distinction here between orders, and convictions, is for the purpose of observing, that less formality is deemed necessary to be preserved respecting the *former*, than respecting the *latter*.^{*} In the case of an order, (*ex. gr.*) it is not always necessary that it should appear on the face of record, that the defendant was summoned,[†] which is an absolutely necessary requisite in the case of a conviction,[‡] except when his appearance renders it immaterial. So an order has been holden good, in the case of removing goods to avoid distress, under 11 Geo. 2, when the offence was expressed in the alternative, “removed, or concealed, goods, &c.” for, as was said by Lord Mansfield in one case,[§] though in indictments and convictions the court is bound by a long succession of cases to require certainty to the greatest degree of technical precision, in *orders* more latitude is allowed; and if the record be *substantially* right, the court will *intend*, that all the necessary formalities have been observed.

As the appeals against *particular descriptions* of orders will come to be further considered hereafter, as well as against *particular descriptions* of convictions, sufficient notice has already been taken of the *general* differences between them, so far as regards appeals from them respectively; and we must proceed to other matters respecting appeals in the abstract, preliminary to any minute discussion of the individual questions, on which they may be made. On this view of the subject three considerations offer themselves; viz. the right of appeal itself; the steps to be taken in exercising it; and the session to which it is to be preferred.

Appeal from the proceedings of justices out of session, to The right of appeal.

* R. v. Morgan, Cald. C. 156. 1 Burr. R. 399.

† R. v. Oxfordshire (Justices of), 1 M. & S. 448.

‡ R. v. Venables, 2 Ld. Raym. 1405.—R. v. Hawker, Cald. Ca. 391.

§ R. v. Middlehurst. 1 Burr. R. 399.

the court of session, is not a matter of common right, but of special provision.* And it must be given by express enactment, and cannot be extended by an equitable construction to cases not distinctly enumerated. Thus, on the subject of the excise laws, the 12 Car. 2. c. 24, after empowering *two justices* to hear and determine matters on complaint, and, on their neglect, gives similar power to the sub-commissioners, and then proceeds to allow persons aggrieved by *any judgment of the sub-commissioners* to appeal to the sessions, but makes no mention of any appeal from the judgment of the two justices. Now it has been determined that neither under this act, nor any subsequent one which adopts or bears reference to its provisions respecting appeals, is any appeal given by equitable construction from the judgment of the two justices; for an appeal is only given by express words, from that of two sub-commissioners, and the authority cannot be extended by *inference*.†

Steps necessary
to exercise the
right.

When an appeal is allowed by statute, certain conditions are frequently annexed to the indulgence, viz. that a notice shall be given to the magistrate whose order, or conviction, is appealed from, and that the appellant shall enter into recognizance in some prescribed sum to prosecute such appeal. The notice is sometimes directed to be within a limited time after the conviction, sometimes is left at large. In the latter case the time will of course be regulated by the general rules respecting *reasonable* notice. It should, however, always be in writing, except it be given in person immediately on the conviction taking place, when the recognizance *being taken by the magistrate* is equivalent to the receipt of notice in writing.‡

By many statutes it is made a part of the magistrate's duty to inform the party whom he convicts, that an appeal lies from such conviction, and also to inform him of the necessary steps to be pursued to that end. In convictions under

* 1 M. & S. 448.

† R. v. Surrey (justices), 2 T. R. 504.

‡ See *post*, where this subject is more fully considered, in treating of the judgments of the court of session.

such statutes, if the justice neglect *any* part of this duty, the appellant is discharged from the necessity of notice, and the session is bound to receive the appeal.*

But on a motion for a *mandamus*, to enter an appeal and continuances, &c. upon a conviction for an offence against 17 Geo. 3. c. 56, the 20th section of which stat. requires that "the magistrates at the time of conviction shall make known to the offender his right of appealing to the next session," the affidavit of the appellant (on which the motion was founded) stated that the convicting magistrates *did not* make known to him at the time of his conviction such right of appeal, and that he was not informed of such right till *some time afterwards*, and that he *then* gave notice in writing of his intention to appeal, and procured sufficient sureties for trying such appeal: but there not being any meeting of the said justices, or of any two justices, before the holding of the next general quarter session, he with his sureties attended at such session, and entered his appeal with the clerk of the peace; which appeal the justices in session refused to entertain, on the ground that he had not given notice of his intention to appeal *at the time of his conviction*, nor entered into recognizance, &c.

The *mandamus* was granted, on the ground that the affidavits filed by the justices in answer were dated and sworn before a commissioner of B. R. but contained *no place* in the *jurat*, *where* sworn, and *the court* were of opinion that *the place where* the affidavit is taken ought always to be stated, as one medium through which it may be ascertained whether the person taking it is a commissioner, and for other causes.

The justices made their return, "that they caused the appeal to be entered, &c. and that upon the hearing it was proved that the two justices *did* make known to *Marvson* at the time of his conviction his right to appeal, &c. and that he failed to prove any notice of his intention to appeal; but, on the contrary, that, at the time when the justices so made known to him his right to appeal, he waved his intention

* R. v. Leeds (justices), 4 T. R. 583.

of so doing, by actually replying 'that he thought he had better pay the penalty,' and that he did not then, or at any time before the calling on the appeal, enter into a recognizance, &c."

It was contended in answer to this return, that *Mawson's* reply was not a waiver of his right to appeal, nor did it dispense with the duty of the justices to proceed further, and inform him also of all the necessary steps to be taken in prosecuting such right of appeal.

But *Lord Ellenborough, C. J.* said, "All the statute positively requires is, that the justices shall make known to the person convicted his right of appeal; they did so; and if he had thereupon signified his intention to appeal, *non liquet* that they would not also have proceeded to inform him of the further steps to be taken by him. But why should they do so nugatory an act, as to inform him what he must do to appeal and enforce his right, when he had declined to appeal altogether, and had waved his right."*

When an appeal is given on certain conditions from a conviction to *any quarter session*, to be holden within six months, after appellant lodge his appeal, and the court dismiss it, because the conditions imposed have not been complied with, and confirm the conviction, such judgment is conclusive, and a second appeal cannot be lodged, though the six months may not have expired.†

To what session.

The session to which an appeal must be preferred, means quarter session, not general session,‡ and the other particulars are respecting place and time.

1st. As to place, the appeal must be to the session of the jurisdiction in which conviction is, unless otherwise specially appointed by the statute conferring the right; from the conviction of corporation magistrates to the session of the borough, from that of county justices to the session of the county.§

But in appeals respecting removals of the poor, that the

* *R. v. West Riding of York (justices of)*, 3 M. and S. 493.

† *R. v. West Riding York (justices)*, 3 T. R. 776.

‡ 15 E. R. 632.

§ *Skin. 122. 1 M. & S. 448.*

appeal may never be *ab eodem ad eundem*,* by 8 and 9 Will. 3. c. 30, "the appeal against any order of removal shall be prosecuted at the general, or quarter, sessions for the county, division, or riding, wherein the parish, township, or place, from whence such poor person shall be removed, doth lie, and not elsewhere."

2d. As to *time*. The period within which an appeal must be preferred is generally pointed out also by the statute; if there be no such appointment, the construction of the courts is, that it must be within a *reasonable time*; † but where there is such, it is most commonly to the next session. This expression, *next session*, has been the subject of much controversy, as well with respect to the *terminus à quo*, as the *terminus ad quem*. When a statute gives an appeal from a conviction to the next quarter session, it is construed to mean *next after the conviction*, and not the next after the execution or levying of the penalty.‡

Within what time.

Next session, what means thereby with respect to the *terminus à quo*.

By 13 Geo. 3. c. 78. s. 19. an appeal is given against orders of justices for stopping up roads "to the parties aggrieved by any *such orders or proceedings* had," &c. and the question was the precise period *from which* the grievance was to be estimated, and whether the *terminus à quo* for an appeal was to be reckoned from the time of the order, or from the time of the actual stoppage in consequence of that order. The court of B. R. held that an appeal to the session after the actual obstruction of the road was too late, and that the parties aggrieved having had notice of the order in sufficient time to have appealed to a previous session.§

In a private enclosure act, power was given to the commissioners to set out land in a certain proportion in case of tithes to the vicar, with the following clause of appeal, "and if any persons shall think themselves aggrieved by *any thing done* in pursuance of this act, they may appeal to any general quarter session of the peace for the county, &c. within six calender months *after such cause of complaint*

* Barr. S. C. 592.

† R. v. Oxfordshire (justices), 1 M. & S. 448.

‡ Prosser v. Hyde. 1 T. R. 414.

§ R. v. Pembrokeshire (justices), 2 East. 212

shall have arisen." The commissioners made an allotment upon the map, which the vicar inspected in November, 1812, and appointed an agent who attended a subsequent meeting, when an alteration was made which such *agent approved*, and it was understood at the meeting where such agent so concurred, that all objections were reconciled, and the allotments definitively settled. In November, 1813, the commissioners *gave notice* that all tithes were to cease from the 29th of September last preceeding. The vicar being dissatisfied *entered an appeal* against the commissioners' allotment at the epiphany session, 1814, being within six calendar months from *the date of the notice* of the commissioners above mentioned. This came on to be heard at the following Easter session, but was dismissed as being out of time. The question was the *terminus à quo* the "grievance commenced." The court of B. R. was of opinion that *the notice of the commissioners of the time from which the tithes were to cease*, was the commencement of the vicar's grievances, and therefore that the appeal being within six months from *that period* was in time.*

A party assessed to a highway rate refused to pay, and a warrant of distress was granted by two justices, on the 4th day of December, which was executed on the 12th day of the same month, and the party gave notice of Appeal *within six days days after the said 12th day of December*. The words of 13 Geo. 3. under which this distress was granted, are "within six days after the cause of complaint," and the only question was whether "the cause of complaint" was the issue of the warrant, or the levy under it. The session had dismissed the appeal, and on a motion for a *mandamus* to receive it, the court of B. R. said "the period when the party appealing was damnified was before the warrant was *executed*, not when it was *granted*, for *non liquet* that it will ever be proceeded upon." †

Inquisition on a writ of *ad quod damnum* respecting a road therein described, taken on the 11th day of Novem-

* R. v. Gloucestershire (justices), 3 M. & S. 127.

† R. v. Bucks (justices), 1 M. & S. 412.

ber, 1812. No inclosure or stoppage of the road till June, 1813, when a gate was put across, and a board put up, dated the April preceding, with notice that, by virtue of the writ and enquiry before a jury, &c. the road in question was stopped. On the 2d of July gave notice of appeal, and it came on to be heard at the Midsummer session, but was dismissed as being out of time. The words of the statute * are, that "it shall be lawful for any person injured or aggrieved by any *such order* (of justices) *or proceeding*, or by the inclosure of any highway by virtue of *an inquisition* taken upon a writ of *ad quod damnum*, to appeal to the next general quarter session *after such order made, and proceeding had*, on giving ten days' notice to the surveyor, &c. But if no such appeal be made, then such order and proceeding shall be confirmed, and the inclosures may be made, and the ways stopped." The question here again was on the *terminus à quò*. The session had rejected the appeal, and the motion was for a mandamus to compel them to receive it: the court said the difficulty of the construction arose on the words "*inclosure*" and "*proceeding*." But proceeding must be understood to mean *legal proceeding*, and *not an act done*. The order to inclose under the inquisition is *itself a grievance, before the inclosure be actually made*. "It shall be lawful to make complaint by appeal to the next quarter session after such order made, *or proceedings had*." These words embrace the whole subject matter of the appeal. It may be to the next session after *the order*, (viz. order of justices) or *proceeding*, (viz. proceeding under an inquisition.) If there be no appeal till the inclosure, the party must make a new highway before it can be determined whether he be at liberty to stop the old one. The appeal must therefore precede the inclosure or stoppage. *Proceeding* then cannot mean *proceeding to stop up*, but proceeding upon the inquisition; the judicial proceeding, not the inclosure in execution of such proceeding. If so, the

* 13 Geo. 3. c. 78.

appeal must be made to the session *next after the execution of the inquisition*. The rule was of course discharged.*

Two justices in a special session, the 20th of June, made an order for a public footway to be diverted and turned. On the 4th of July following they made another order for the old footway to be stopped up. Appeal at the next *Michaelmas* quarter session, the Midsummer quarter session having been holden on the 11th of July. The justices dismissed the appeal, conceiving that the time within which it was to be made was to be reckoned *from the date of the first order*, which was for diverting the way. But it was contended in support of the motion for a mandamus to compel the justices to hear the appeal, that the grievance commenced only at the time of the order for *stopping up the old footway*, not from that of the order for making a new one, and of that opinion was the court of B. R.†

An act for the inclosure of certain lands in the parish of C., county of Middlesex, passed with a clause of appeal in the usual terms, "*within six months from the time when the cause of complaint shall have arisen.*" The commissioner (for there was only one in this case) at a meeting under the act, holden on the 18th of June, 1818, shewed the map to the present appellant, with *the allotment marked out upon it*, which he, the commissioner, had assigned to him, the appellant. The latter raised some objections to it, and desired the commissioner to reconsider it. He did so, but did not think fit to make any alteration, and having received no further application, on the 28th of August following sent a formal notice to the appellant that the land remained allotted to him according to the map exhibited to him on the 18th of June previous, and on the same day the said allotment was accordingly *staked out* by command of the said commissioner. According to the particular act, as well as the general act of inclosure, no allotment ought to be *made*, till the roads have been *set out*; and the roads in

* R. v. Bucks (justices) 3 M. & S. 230.

† R. v. Herts (justices) 3 M. & S. 459.

this case could not be *staked out* till the end of July, because the crops were on the ground. The appeal was lodged on the 9th of January, and respited till the 29th of April, when it was opposed on the ground of not having been lodged *in time*, i. e. within six months from the *cause of complaint arising*. The justices conceived that, as the roads were all *set out* on the map, previous to the allotments being made in the same way, it was sufficient if they were *staked out* as soon as the convenience of the occupiers of the crops permitted. They also conceived that, as the map, with the allotment of the appellant, was shewn to him on the 18th of June, no encouragement was given to him to believe that any alteration could be made; as no alteration whatever was subsequently made, or even any renewed application for such alteration, (although there were other meetings held in the interim on the subject of the inclosure; and the allotments set out in the map, were considered final, and matters of public notoriety in the parish;) and as the subsequent notice was only a repetition and confirmation of what had been exhibited to the appellant as the decision of the commissioner on the 18th of June; that the cause of complaint, if any, arose on the 18th of June, when the notice was given to the appellant, and that the appeal therefore (on the authority of *R. v. Bucks*, justices) ought to have been within six months from that time, and dismissed the appeal.*

On motion for a *mandamus* to compel the justices to enter continuances and hear the appeal, the court of B. R. thought "there was no actual setting out of the allotment in this case, according to the true construction of the act, till something was actually done, founded upon the plan." †

An inclosure act gave to the party aggrieved a right of appeal for any thing done in pursuance of *that* act, or of the (recited) general inclosure act, on giving to the commissioner *and to the parties concerned, ten days' notice*, in writing. Notice of appeal against an order ascertaining the boun-

* See *ante*, *R. v. Bucks* (justices) preceding page.

† *R. v. Middlesex* (justices) *M. & S.*; and 1 Chit. R. 367.

daries between two townships, was served on the commissioner, *but not on the lady of the manor*, who was a party materially interested in the question, because the commissioner had (as was alleged) committed a great error in ascertaining the boundaries of the parish to be inclosed. The appeal was made to the quarter session on this ground, viz. that the commissioner had included within his boundary a considerable part of an adjoining manor belonging to a Mr. S. When the case came on, the counsel of Mr. S. proposed to respite the hearing. But it was opposed on the ground, that the notice was insufficient, and the session had therefore no jurisdiction, no notice having been given to the lady of the manor. Of this opinion were the justices, and ordered the case to be struck out of the paper.

A mandamus being applied for, to enter continuances and to hear the appeal, the court of B. R. were unanimous in opinion that the justices had acted right, and the mandamus ought *not* to go. The notice of appeal was insufficient. The party who appeals is bound to give eight days' notice by the general act to the commissioner; by the local act ten days' notice to the commissioner, *and also to the parties concerned*. The latter therefore, *so far* supersedes the provisions of the former; and it would be a great hardship if the *party concerned* were bound by a notice to the commissioner alone. "Party concerned" means, parties directly interested in the soil; which in this case the lady of the manor is, and therefore entitled to notice, which she has not received.*

There are other cases in the books on this immediate subject, but they are not of so recent a date, nor do they throw any light on what may appear, at first sight, to be the discrepancies between the two or three cases last introduced. Another, however, arising indeed out of a different kind of claim, but nevertheless pointing out the *particular gradations* of right conferred by the progressive proceedings of commissioners under inclosure acts, may not be thought

* R. v. Lancashire (justices) 1 Barn. & Ald. R. 630.

entirely irrelevant to the general subject under discussion, and may illustrate some points of nice discrimination. Whether it may entirely reconcile the cases last animadverted upon, must be left to the reader's decision. A local act, for the inclosure of certain lands in the parish of N, in the county of Norfolk, passed in 1815. By that act a power was given to the commissioners, on *giving notices*, to *allot* the waste and common lands, and to extinguish (*by such allotment*) all rights of commonage over the same, and to authorise the persons, to whom such *allotments were made*, to *take possession of*, and to *fence*, the same. The *notices* were duly given, and the rights of commonage declared to be extinguished in February 1816. In March 1816 an order was made for the proprietors to *take possession* of their allotments from that date. In April 1817 the award of the commissioners was executed according to the provision of the local act, and of the general inclosure act of 41 Geo. 3.; by which award the allotments (as before made) were *awarded* to the respective proprietors. The question immediately before the court arose upon an action of replevin, and then the great question was, "at what period one Mason, one of the persons to whom an allotment had been made by the commissioners, had a *legal seizure* of the land so allotted to him." The determination of that question abstractedly does not apply to our present point of examination, but the *progress* of the rights accruing to the allottees, at the different periods of the commissioners' giving notices, allotting, extinguishing rights by such allotments, authorizing allottees to take possession, and ultimately confirming the allotments by their award, do seem by analogy to throw considerable light on the question so frequently mooted in appeals under inclosure acts; viz. at what point of the proceedings of the commissioners, (viz. of allotting, staking out, confirming by award, &c.) the *grievances*, to be appealed against, *arise*, so as to become a *ground* of appeal. Abbott, C. J. in giving judgment in the case under review, *inter alia*, notices that, "by the general act, 41 Geo. 3. § 8 & 10. the commissioners are required first to set out public roads, then private roads.

By § 17. persons to whom allotments are to be made, are required to accept (finally,) their allotments within two months after execution of the award, or forfeit all their right in the lands inclosed. By § 14. the shares allotted shall be taken in full satisfaction of all rights; and after making the division, and execution of the award, or at such other times as the commissioners shall in a particular manner direct, all rights of common, and other rights, shall be extinguished. By § 19. *after allotments made, and before execution of the award*, the persons to whom *allotments shall be made*, are enabled, with the consent of the commissioners, *to enclose and fence their allotments*. By § 35. the commissioners, as soon as conveniently may be, after the division and allotments shall be finished, shall draw up their award in writing, &c.—which is to be engrossed on parchment, read and executed in the presence of the proprietors, at a meeting held for that purpose on notice given, and the execution is to be proclaimed in the parish church on the next Sunday, &c.; from the time of which proclamation, and not before, their award shall be considered as *complete*, &c.—Consequently, unless the effect of any of these provisions be varied by those of the local act, a LEGAL TITLE *is not acquired before the proclamation of the award.*” (This was the particular point of the case before the court.) “By the local act (after many other provisions respecting the allotting for roads, watering-places, gravel pits, &c.) as soon as the commissioners shall have ascertained the rights and interests of the proprietors, and the shares and proportions to be allotted to them, they are to give notice in writing of a convenient time and place where the proprietors *may be informed of such proposed allotments, and may see the scheme thereof upon a plan or map to be produced*; and as some of the proprietors may be dissatisfied with the proposed allotments, the commissioners are to receive statements in writing of objections, and afterwards to determine the same, and THEIR DETERMINATION AS TO SUCH ALLOTMENTS SHALL BE FINAL AND CONCLUSIVE. It is then further enacted, that, after the several allotments shall have been marked, staked out, &c. and *before the*

signing the award, it shall be lawful for the proprietors to inclose and fence them, &c.—These authorities to inclose and fence, and, as a consequence thereof, to enjoy in security, and even the power to sell and convey, (which are provided for by another section in the local act,) in this stage of the proceedings, *may well be enjoyed and exercised* without the actual *ownership or seizure* of the land, which, according to other words in this act, it should seem cannot be *forfeited*, till the final measure contemplated by the statute, viz. the award, shall conclude and consummate all antecedent steps." *

This is sufficient of the case under review for the illustration proposed, and it does seem to follow, from the progressive acquisition of rights in the allottees specifically pointed out by this judgment, that the precise point of time when the right of appeal to the sessions from the judgments of commissioners, may be collected, without much difficulty, in *most* cases; in *all* cases indeed where the provisions of the local act do not contradict or supersede those of the general inclosure act, or where they are (which is generally the case,) conformable with the enactments of the statute, which brought the question just discussed before the court. The grievance, or foundation of appeal, it is conceived, arises at *that point of time* when the allottee, having had notice of the portion allotted for him *on the map* by the commissioners, fails (either by total omission to object to it; or, having objected, to convince the commissioners, and thereby to obtain redress,) to procure any alteration of his allotment. In the words of the local act, lately reviewed, as soon as he shall have obtained a knowledge that "*the determination of the commissioners as to his allotment* (however obtained, whether from a map, or by staking out, or by whatever other proceeding) is, *so far as depends on them, final and conclusive.*"

Next session has also in numerous instances been determined to mean next *practicable* session. This indeed involves a question of fact, which can only be decided by the

What, with respect to the *terminus ad quem*.

* *Farrer v. Billing*, 2 Barn. and Ald. 171.

particular circumstances of each case ; but there have been several determinations on this particular part of the subject, which may serve as an exposition of the general rule, and enable us to apply it to almost every possible occurrence. On this division of the subject the cases are as numerous, as on that we have been examining. The following may be sufficient for the purpose of illustration.

East. Term.—19 Geo. 3. a *mandamus* was moved for, to receive an appeal. The order of removal had been made by the two justices on the 22d of September, but the pauper was not removed till the 5th of October. Hull, the place to which the pauper had been removed from Whitby, is sixty miles from Northallerton, where the session began on the 6th of October; at that session no appeal was entered; and at the Epiphany session following, which began on the 12th of January following, the parish charged offered an appeal; the justices refused to hear it, thinking themselves bound by the words of the statute, which says, “that persons aggrieved may appeal to the justices of peace at the next quarter sessions.” The court said, “that by next session the statute of Car. 2. must have meant the next possible session; and that here it was impossible for the appellants to lodge their appeal at the Michaelmas session.” *

Michaelmas Term.—30 Geo. 3. a *mandamus* was moved for, to compel the justices to receive an appeal against an order of removal. The order was made on Friday the 18th of April; on the 19th the pauper was removed, and on the Tuesday following, the 22d, the Easter session was held at Hereford, twenty miles distant from the parish to which the party was removed; at which session it is the practice not to receive any appeal after the Tuesday morning. The parish not having appealed at the Easter session, the justices at the Midsummer session refused to receive the appeal, because not made at the next quarter session: the foundation of this application was, that as the officers of the parish to which the pauper was removed,

* R. v. Yorkshire, W. R. (justices) Dougl. R. 183.

had not sufficient time to convene a meeting of the inhabitants, in order to take their opinion upon the subject, whether there were any grounds for the appeal, the Midsummer session was the *next possible session*.—But by Lord Kenyon, C. J. “The words of the act of parliament are very strong, and they require the appeal to be made at the *session next after the grievance*. Where indeed an order of removal has been made some time before, and only executed a very short time before the session, so that there was no possibility of appealing to that session, this court has interfered, by granting a *mandamus* to compel the justices at the following session to receive the appeal, because the words *next sessions* mean the *next possible sessions*: but this is a very different case; for there were two intervening days after the execution of the order, and before the Easter session; and if there was not sufficient time before such session to give reasonable notice of appeal, the appeal might then have been adjourned according to the statute 9 Geo. 1. c. 7.”—The three other judges concurred.—*Mandamus* refused.*

Order of removal from a town in Yorkshire, West Riding, to St. Luke's, Middlesex, dated 3d January, executed 12th January, the next session for said county of York, West Riding, being on the 18th of January. The parish of St. Luke's did not appeal at that session, but offered to lodge an appeal (for hearing at a subsequent session) at the next session, viz. at Easter, but the justices refused to receive it, on the ground that it was too late. On motion for a *mandamus* to receive the appeal, Lord Ellenborough, C. J. said, “Although they ought perhaps in strictness to have appealed at the January session, considering the great distance between the parishes, we might have relieved them, if they had at the *next session done all that they could have done*; but what did they actually do even at that session? Only *offer* to appeal for a future hearing, but had given no notices, and were not after all that delay in a condition to be heard, but only to enter an

* R. v. Herefordshire (justices), 3 T. R. 504.

appeal for hearing at a still subsequent session." Rule discharged.*

Hilary Term.—52 Geo. 3. a motion for a mandamus to enter continuances and hear an appeal to overseers' accounts.

Overseers' accounts had not been allowed till the very last day when an effectual notice of appeal could be given to the *then next session*. Many cases were cited in argument in B. R. to shew what had been the construction of the word "next" † in various cases. Determined by the court of B. R. that neither under statute of 43 Eliz. c. 2. nor under 17 Geo. 3. c. 36. (supposing the latter to be a repeal of the former as to giving an appeal to the next session after the verification and allowance of such accounts, instead of giving the appeal generally as the statute of Eliz. does,) was the appeal too late to the *next subsequent session*, for which an effectual notice could be given. ‡

Hilary Term.—53 Geo. 3. it was decided again by the same authority, that only one intervening day between the publication of a rate, and the *next immediate* quarter session, is not (upon the principle adopted in the last preceding case,) sufficient for an effectual notice of appeal. §

Michalmas Term.—58 Geo. 3. another case upon precisely the same ground was similarly decided. On motion for a *mandamus* to have an appeal from an order of removal, Lord Ellenborough, C. J. said, "*next session*" in all cases means next *practicable* session. In this case, the distance between the respondent, and appellant, parishes was twenty-four miles, the appellant parish was distant from the county town thirty-seven miles. Only two days intervened between the source of the notice and the day of the session being holden, and one of those was Sunday, which no man is obliged to devote to secular purposes, and

* R. v. York, W. R. (justices) 4 M. & S. 327.

† Especially R. v. Berks (justices) 1 Bott. 309.—and R. v. Goode, Id. 235.

‡ R. v. Dorsetshire (justices) 15 E. R. 200.

§ R. v. Sussex (justices) 15 E. R. 206.

without so doing in this case, there could not be sufficient time for all that was necessary to be done. As to entering an appeal for the mere purpose of *respiting*, which it is said might have been done, it is only increasing unnecessary expence. The *next subsequent* session therefore in this case was *the next practicable session*." *

When an appeal is given to the next session upon certain conditions, as, *ex gr.*, a certain number of days' notice, entering into a recognizance, &c. &c. in such cases, if an appeal be lodged at the proper session, but dismissed for want of compliance with any of the prescribed concomitants, the right of appeal is gone, and cannot be afterward recovered or renewed. Thus, when a statute gives an appeal from a conviction to any quarter session, to be holden within six months, on condition of appellant giving ten days' notice of his intention to appeal, and *entering into recognizance within four days after such notice*. An appeal was lodged at the first session after a conviction, which the session discharged *instantèr* from want of proof that any recognizance was entered into within four days of the notice given. At the following session, being still within six months after the conviction, a second appeal was lodged, which the court refused to hear. On a motion for a *mandamus* to compel the court to receive such second appeal, the court of B. R. held, "that the first judgment on the formal objection was conclusive, and they could not take cognizance of a second on the same subject. The appellant might indeed have stopped his first appeal from being heard at all, when he discovered his deficiency of proof, and have lodged a second within the limited time, giving fresh notices, and being prepared with proof of entering into recognizance, but having proceeded to judgment, he is concluded." †

So on a conviction for deer stealing, under 16 Geo. 3. c. 30., which requires an appellant to *enter into recognizance*, and to give *six days' notice* of intention, on doing both

* R. v. Essex (justices) 1 Selw. & Barn. R. 210.

† R. v. Yorkshire, W. R. (justices) 3 T. R. 776.

which he may appeal to next session, after expiration of twenty days from the time of the conviction. On the appeal there was no proof of the six days' notice having been given. The justices doubted, and respite the hearing till the following session, when having taken advice on the subject, they admitted the objection, and dismissed the appeal. On a motion for a *mandamus* to compel them to hear it, Lord Ellenborough, C. J. said, "the entering into recognizance, and the giving six days' notice, were both made *precedent* conditions, and if *either* has not been complied with, the appeal could not be duly entered, and if so, could not be legally adjourned." To which Le Blanc, J. added, "that it would be nugatory for the court of B. R. to order *continuances* of *that* which the parties had no right *originally* to bring before the session in the first instance, for want of a material condition being complied with, which gave that right." *

It was observed in a previous page, that the settlement, maintenance, and removal, of the poor, presented one of the most prominent subjects of consideration respecting appeals from the adjudications and orders of justices. To this then, having dismissed the discussion of the preliminary questions respecting appeals in the abstract, we now proceed. It resolves itself into two heads.

1. The settlement of paupers.
2. The rates upon property for their maintenance.

Settlements by
birth.

The settlements of the poor of this country are, by a succession of statutes, obtained from two sources, and two only.—They are obtained simply by birth, or through the medium of some modification or other of inhabitancy.† This general rule of law is, that the place of birth is the *prima facie*, natural place of settlement of every child; subject nevertheless, first, to certain exceptions; and secondly, to what may be denominated, in contradistinction to its *natural*, an *adventitious* settlement, derived from its parents, or acquired by itself. Out of these ex-

* R. v. Oxfordshire (justices) 1 M. & S. 442.

† See Pract. Expos. title, Poor. Sect. 1.

ceptions; or from the accession of these acquired settlements, must arise all the doubts or difficulties which give occasion to appeals. The exceptions apply particularly to illegitimate children, or bastards; because, generally speaking, they are the only children to whom an adventitious settlement, derived from that of one, or the other, of their parents, does not immediately accrue.

With respect to bastards, then, it may be stated as an universal proposition, that the place of their birth, is that of their settlement, except, Place of birth the settlement of bastards.

1. Where there has been any collusion or contrivance to throw a burthen on the parish, for then the fraud will vitiate the transaction, and prevent the design. Exceptions.

2. Where the child is born of a woman under an order of removal; whether before actual removal, or in *transitu*, or during a suspension of the order. Child born after order of removal.

3. Where an order of removal is reversed; for then all things happening subsequent to such order, are avoided thereby. Order reversed.

4. When the child is born of a mother in a state of vagrancy. In vagrancy.

5. When born in a gaol or house of correction, or in a house of industry incorporated by statute, or in a lying-in hospital, or in a lunatic asylum,* or other charitable institution.† In prison, &c.

6. When born of a mother residing in a parish where she is not settled, under the authority of the Friendly Society act. During residence under friendly society act.

7. When born of a mother residing under a certificate which includes the child specifically by description. Comprehended in a certificate.

If a bastard, then, be removed to the place of its birth, before it has acquired a settlement of its own, the only good ground of appeal against such order, must be by shewing that it was born under such circumstances as are comprehended in one or other of these exceptions.‡ And

* 51 Geo. 3. c. 79.

† 54 Geo. 3. c. 170.

‡ See Pract. Expos. title, Poor, where most of the authorities are introduced which support these various exceptions, and form the system.

in the event of such case being made out, it will belong to the place of its mother's settlement.

Of children
born in wed-
lock.

Have parents
settlement.

With respect to legitimate children, or children born of married parents, supposing those parents to have no place of settlement, upon the principle before advanced, the place of the child's birth will be that of its settlement; because *prima facie* that is the settlement of *every* child till another be discovered;* but every legitimate child, or child born in wedlock, is entitled to its father's settlement, if he have one, and if he be a foreigner and have not one, to its mother's, if she be a native and have one.† Such is the general rule with respect to legitimate children, but to this also there are some exceptions, though by far less numerous than in the case of bastards.

Exceptions.

Born in va-
grancy, and
mother dying.

Foundlings.

1. If a legitimate child be born in a state of vagrancy, and the settlement of either of its parents cannot be found, by reason that the mother died in giving it birth, or other cause, it must belong to the parish wherein it was born, till they can discover a derivative settlement.

2. In the case of foundlings or deserted children, maintained in an hospital founded and endowed for that purpose, and regulated by statute.‡ Foundling, *ex vi termini*, seems to imply ignorance of origin, and consequently of derivative settlement; the general rule therefore, before exhibited applies, with only the difference enacted by the statute, which is nothing more than transferring the burden of maintaining these children from the overseers of the poor where the hospital is situate, to the special provision of the hospital itself.

Having thus noticed the general rule respecting derivative settlements, we come next to some applications of it, tending to shew its universality; and then to consider how derivative settlements are superseded by acquired ones, as this is the most fruitful source of appeals to the quarter sessions.

* R. v. Heaton, 6 T. R. 653.

† R. v. Stone, 6 T. R. 55.

‡ 13 Geo. 2. c. 20.

The position advanced, being, that the settlement of the father is the settlement of his legitimate child, the corollaries from this proposition are:

1. That *proofs* of the father's settlement are sufficient to establish the settlement of the child, *if nothing appear to the contrary*.*

And such a personal right is this in the children to their father's settlement, that it is not defeated by his attainder,† nor by the removal of his residence:‡ nor by the change of his (the father's) settlement, for the child's shall follow it *toties quoties*; § nor by the father's death either before, or after, the birth of the child. ||

Father's attainder.

Change of settlement of father, death, &c.

2. That no recourse shall be had to a secondary claim of settlement (for example the mother's) till the primary one, viz. the father's, has been traced back so far as it will go. On this principle it was determined, that children had the settlement of their father, though a derivative one, from *his* mother, who had married a foreigner without settlement, in preference to an acquired one of their own mother.**

Father's settlement always to be preferred to the mother's, however derived.

Proof of any settlement in the father failing, the mother's settlement must be next resorted to. And it matters not whether such settlement of the mother (none being discoverable in the father) were by her birth, derivative from her parents, or acquired by herself, either during the life of her husband, or subsequent to his decease. ††

Mother's settlement resorted to in failure of father's.

We have seen that the settlements of children derived from their father, change with *his*. Settlements derived from the mother also change with *hers*, while acquired by her in *her own right*, either as the wife, or the widow, of a husband having no settlement; but if after the death of such husband, she marry a man with a settlement, and thereby partake of his settlement, she does not communicate such second husband's settlement to the children by her former husband. †††

How far the settlements of children derived from their mother, change with her change of settlement.

* R. v. Stone, 6 Term Rep. 56.—2 Bott. 31.

† R. v. Cardigan, 6 Term Rep. 116.—R. v. Haddenham, 15 East's R. 463.

‡ 2 Ses. Ca. 150. § 3 Salk. 259. || 19 Vin. 382.—2 Bott. 19.

** Burr. S. C. 482. †† Burr. S. C. 367.—2 Bott. 26 and 28.

††† St. Giles's v. St. Clement's, Cald. Ca. 10.

Emancipation. We come next briefly to consider what acts of the children defeat their derivative settlements; or, as it is termed, amount to EMANCIPATION.

A legitimate child shall *necessarily* follow the settlement of one, or the other, of its parents, as requiring nurture, till it be seven *seven years of age*, and *therefore as part* of the parents' family; but after *that* age it shall not be removed as part of the parents' family, but by an express adjudication of the place of its own legal settlement, whether it still retain its derivative one, or not. The reason of this is, that, at seven years of age, a child may be put an apprentice, and has therefore itself a capacity to acquire a settlement. So that, at seven years and forty days, a child *may* have defeated its derivative settlement, and acquired a personal settlement of its own. These personal settlements may be obtained by a great variety of methods, as apprenticeship, hiring and service, marriage, renting a tenement, possessing an estate, serving an office, &c. But a child may also be emancipated from its parents, without having obtained any new settlement for itself, or having done any thing to supersede its original derivative one. The cases which govern this head of law are extremely numerous,* but the criterion, by which the fact of emancipation is to be collected from them, is as follows: "Ordinarily," said Lord Kenyon, "one of these things must happen—either a child must have obtained a settlement for himself, *or* he must have become the head of a family, *or*, at all events, must have arrived at that age when he may set up in the world for himself, having contracted some relation which is inconsistent with the idea of being under the controul of, or in a subordinate-situation in, his father's family."† And, in a subsequent case, the same Chief Justice laid down a rule, which, he observed, would reconcile all the cases on emancipation, in these words: "If a child be separated from his or her parents, and without obtaining any personal settlement, return to the parents during the *age of pupilage*, such child remains part of the parents' family; but if when, by

Earliest period to gain an acquired settlement.

Emancipation, how produced.

* See 2 PRACT. EXPOS. 406.

† R. v. Offchurch, 3 Term R. 114.—Id. R. v. Witten, 355.

estimation of law, a child wants no further protection from the parents, and removes from them, such child shall not, *for the purpose of* a derivative settlement, be deemed part of the parents' family.*

A widower having a daughter, placed her, at eleven years of age, with an uncle, by whom she was wholly maintained after that time, and with whom *she continued to reside after she came of age*, (doing service to him, but without any contract of living to give her a settlement of her own,) the father, in the mean time, having gone out to service: it was holden by the Court of B. R. that on her coming of age she was emancipated, although her father conceived himself bound to support her if she left her uncle. From the determination of this preliminary point, it followed, of course, that the father was capable of gaining a settlement by hiring and service for a year as an "*unmarried man, not having a child*," that is to say, a child who would follow his settlement within the statute. 3 W. & M. c. 11.†

But where a pauper was bound apprentice to a *certificated person*, by which indenture, therefore, he could not gain any settlement, and during the apprenticeship, he being of the age of eighteen, his father gained a new settlement, and the pauper did not return to his father till after he was twenty-one; it was holden, that the apprentice was not emancipated, and that his settlement followed that of his father; for, said the Court, a separation, while *under twenty-one*, does not produce an emancipation, unless a subsequent settlement be gained: here none was gained, and therefore his settlement shifted with that of his father.‡

APPRENTICESHIP appears to be the earliest mode by which an adventitious, or personal, settlement can be acquired. It has been already observed, that the limit of age of nurture has been fixed at seven years, and by a statute of

Acquired settlement; and first by apprenticeships.

* R. v. Roach, 2 Bott. 46.

† R. v. Cowhoneybourne, (Int.) 10 E. R. 88.

‡ R. v. Huggate, 2 Barn. and Ald. 584.

Queen Elizabeth,* at that period, the children of the poor may be even *compelled* to go into apprenticeships.

By a previous statute, at the very commencement of the same Queen's reign, the qualifications of persons entitled to take, and to become, apprentices, had been regulated. Efflux of time, and the progress of commerce, however, had made many of its provisions inconvenient, and had occasioned many of its restrictions and penalties to fall into disuse; wherefore they were repealed by the 54th of Geo. 3. c. 96. and are unnecessary to be further noticed here; especially as, by the third section of the last mentioned statute, all the power and authority relative to apprenticeships, is reserved to the justices *generally*, as had been given to them *especially* over apprenticeships contracted by the authority, and regulated by the restrictions, of this repealed statute of Elizabeth.

The contract itself, by which the relation of master and apprentice is formed; the residence under it, and the effects of that residence; the premature conclusion, and the evidence to support, or to annul, such contract; severally give occasion to numerous Appeals. A few observations, therefore, on each of these particulars; and first, of

THE CONTRACT ITSELF.

The contract. 1. The contract may be made by any person more than seven years of age for *him*, or *her*, self; for being generally, and invariably supposed to be, for the child's benefit, it is a case, beside the common rule of law, which makes the contracts of infants void.† So decidedly is this the law, that even in a case where the justices had disapproved of a parochial apprenticeship, to a particular individual, and refused to affix their signatures to it, yet the infant, at nine years of age, with the consent of his mother, bound himself, for seven years, to that particular individual whom the justices had disapproved, and the parish officers advanced the

* 43 Eliz. c. 2.

† 1 Bott. 613.—2 Bott. 363.

premium. An order of sessions removing this apprentice some years afterwards as a pauper, in consequence of conceiving this transaction to be fraudulent, and not to have conferred a settlement, came before the court of B. R.; when Lord Ellenborough, C. J. said, " This might be, indeed, a misapplication of parish money, but, nevertheless, the indenture was good, for all the necessary parties to make it good executed it."*

And the other contracting party, the master, may also be an infant.† And it is perfectly immaterial what is the trade or occupation. †

May be made by an infant.

2. Except in the case of parish apprentices, even if the contract be not the sole act of the parties who are to stand in the relation of master and apprentice, it is absolutely necessary that they should both be *consenting* parties, in order to obtain a settlement by the service under the contract. The proof of that consent, in the apprentice, is his signature, testifying his consent, without which the contract is not a valid contract to confer a settlement, § except in the case of parish apprentices. || But the signature of the master is not absolutely necessary, because his accepting the apprentice is proof sufficient of *his* consent. **

Infant must always be a consenting party, excepting paupers.

Signature of the master not essential.

3. The contract must be a written one, and not by parol. †† For a parol contract for an apprenticeship, *eo nomine*, is void as an apprenticeship, and it cannot be converted into a hiring, so as, with a service under it, to confer a settlement. ††

Parol contract void.

Will not ensue as a hiring.

To this rule, however, there are some few exceptions. The first case which admitted any, was *R. v. Little Bolton*, §§ and that was founded on very particular words in the contract itself. Of the same kind was the two next

Exceptions.

* *R. v. Kelly*, (Inh.) 2 M. & S. 501.

† *R. v. Petrox*, 4 Term R. 196—377.

‡ 1 Bott. 610.

§ *R. v. Ripon*, 9 E. R. 295.

|| *R. v. St. Nicholas*, Nottingham, 2 T. R. 726.

** 2 Bott. 367—371.

†† *R. v. Margram*, 5 T. R. 153.

‡‡ *R. v. Laindon*, 8 T. R. 379.—*R. v. Shenfield*, 14 E. R. 541.—*R. v. Mountsorrel*, 2 M. & S. 460.

§§ 24 Geo. 3.—Cald. Ca. 369.

cases, *R. v. Eccleston*; * as also of a more recent one, *R. v. Burbach*. † But these form special exceptions to the general rule. In the last mentioned of these, it was a *verbal contract*, made by a father on behalf of his son, adopted afterwards by the son, and was, "that the son *should be with* the intended master for two years, and *should work with him* and have what he got, and that he should allow two shillings per week to the said master for teaching him," &c. The son entered on the service, but boarded and slept at his father's house during the time. It was contended, that this was a contract for an apprenticeship, though a bad one, as was clear from its being made by the father for his son, according to the usual course; contracts for services being generally made by the persons themselves. But the court of B. R. said, in this case there was no covenant from the master to teach, and therefore, it having been adopted by the son, and being of doubtful interpretation, and the session having considered it, upon the evidence before them, as an engagement for a service, not for an apprenticeship, it was not for them to say it was necessarily intended for an indenture of apprenticeship; that it fell within the two or three cases which had been considered as exceptions to the general rule, and must be good as a contract for hiring and service, though not good as an apprenticeship.

Stamps necessary.

4. It must be stamped with the proper stamps, as regulated by statutes, ‡ of which there are two descriptions; one in respect of the instrument, as such; the other in respect of the fee or sum given, as a consideration with the apprentice. And the deed or indenture cannot be produced in evidence of the fact of apprenticeship, unless it be stamped with the *proper* stamps; § as strictly so, that if it have a higher stamp than the proper one it cannot be given in evidence. ||

* 42 Geo. 3.—2 E. R. 298.

† 53 Geo. 3.—1 M. & S. 370.

‡ *R. v. Edgeworth*, 3 Term R. 353.

§ *Burr. S. C.* 198.—2 *Bott.* 449.—*Robinson v. Drybrough*, 6 T. R. 317.

|| *Farr v. Price*, 1 E. R. 55.

5. The full sum or consideration given, must be set forth in the indenture in words at length, and the duties paid on it; * and this provision is not to be evaded by giving other things instead of money. † Full consideration to be expressed in words at length.

But it has been determined, that where money was given by the grandfather of an apprentice to clothe him, *before* he entered upon his apprenticeship, it was not such a consideration as the statute requires to be set out in the indenture. ‡

Nor where the friends of the apprentice covenanted to maintain him and clothe him. §

And requiring the *full sum* to be inserted in the indenture, means *not less than* the full sum: therefore, if *more* be inserted, and the duty paid according to that, it is good. ||

These are the principal points of form on which settlements by apprenticeship, in the ordinary course, are usually resisted, upon Appeal to the quarter sessions. The apprenticeships of the *poor exclusively* fall under a different consideration, so far as respects the contract itself; and therefore are necessary to be noticed, before we proceed to consider the effects and consequence of contracts of apprenticeships generally. Indentures of ordinary apprentices.

Thus apprentices bound out under the provisions of any public charity are exempt, by the statutes imposing them, from the duties payable on the consideration money; nor need trustees of public charities be parties to indentures for putting out poor children apprentices with the friends of the charity. ** Poor apprentices exempt from stamp duties.

And *parish* apprentices, being bound out under the provisions of a particular statute for that purpose, †† the contract must be conformable with the particular directions of the statute itself, and subsequent ones passed to amend it, which are;

* Stat. 8 Ann. c. 9.

† 48 Geo. 3. c. 98.

‡ N. Owrain v. Ovenden, B. S. C. 145.—1 Bott. 548.

§ R. v. Portsea, B. S. C. 834.—& R. v. Leighton, 4 T. R. 742.

|| R. v. Keynsham, 5 T. R. 309.—1 Bott. 556.

** R. v. Quainton, 2 M. & S. 460.

†† 43 Eliz. c. 2.

1. That the binding *must* be by the majority of the churchwardens and overseers of the parish to which the pauper belongs.* But it has been holden, that an indenture, binding out a poor apprentice, executed by W. S., churchwarden, and J. G., overseer of the poor, of a hamlet maintaining its own poor separately from the parish at large, not being impeached by evidence negating its execution by a *majority of the churchwardens and overseers* of the hamlet, shall be deemed good, by intending that there were two overseers for the hamlet, as required by statute, and only one churchwarden, by custom, in the same place, and therefore that the binding was regular.†

Also that an indenture of apprenticeship, executed by the overseers of a township which has no church, or chapel warden, and maintains its own poor separately, is a valid indenture, though neither of the churchwardens of the parish at large, within which the township is situate, join in the execution.‡ And an indenture by one churchwarden and one overseer was holden good within the statute, in a case where, by custom, there was *but one* churchwarden. §

2. That the children must belong to parents whom the churchwardens and overseers shall judge not able to maintain them.

3. That boys shall be bound till twenty-one, and girls till twenty-one, *or marriage*.

4. That two justices, having jurisdiction, must be assenting parties to the indenture, and being a judicial act, must be together at the time of *assenting*. || But it is not absolutely necessary that they should sign together.**

5. That such apprentices may, by the assent of two such justices as aforesaid, be assigned; and such assigned ap-

* For the explanation of the words "majority of churchwardens and overseers," see 51 Geo. 3. c. 80. and also 54 Geo. 3. c. 107. and PRACT. EXPOS. *title, Poor, settlement by apprenticeship*.

† R. v. Hinckley, 12 E. R. 361. ‡ R. v. Nantwich, 16 E. R. 223.

§ R. v. Shelton, 1 Barn. & Ald. 175.

|| 3 T. R. 80.

** R. v. Hemstele Ridgeware, 3 T. R. 380.—R. v. Winwick, 8 T. R. 454.

prentices shall be subject to all such regulations as if they had continued to serve under the original indenture.*

THE RESIDENCE UNDER THE CONTRACT, AND THE EFFECTS OF IT.

The settlement of an apprentice does not necessarily de- Residence.
pend on the *settlement of the master or mistress*, but on his *own residence*, during his apprenticeship, in the actual service of such master or mistress. Thus, where an apprentice works in the day-time with his master in the parish of A. but sleeps in the contiguous parish of B. where his home is, B, is the place wherein he obtains his settlement under the indenture.† Because the place where a person *lodges* is generally understood to be the criterion of *residence*. ‡

But, as has been observed, the residence must be in the service of the master; for the words of the stat. creating this species of settlement § “*binding and habitation*” must be understood of an habitation *referable in some way to the apprenticeship*.|| Thus where an apprentice had a general indulgence to be absent from the place of his service from Saturday evening till Monday morning, leaving as usual on Saturday night, and *never returning to serve under his indentures*, gains his settlement where he slept on the Friday night previous to quitting, for there being no account left standing between him and his master when the apprentice left his service on the Saturday, there was nothing from which any recognition of the indenture subsequent to that point of time could be inferred.** Therefore it has been decided, that, if an apprentice, on account of illness, go into another parish than that in which his master lives, merely as a temporary residence to get cured, without performing *any sort of service for his master* during such residence, a settlement is not gained there by *such* temporary residence in such *other* parish.†† And in a case, where a master mariner, having no

Must be in the service of the master.

Absence on account of illness.

* 32 Geo. 3. c. 57.

† 11 E. R. 176.

‡ 7 E. R. 383.

†† 11 E. R. 176.—7 E. R. 466.

† Burr. S. C. 569.

§ 3 Wm. c. 11.

** R. v. Ribchester, 2 M. & S. 482.

immediate occasion for his apprentice's service, the vessel being then in dock, offered, either to turn him over to another master for a time, or to let him go back to school; the apprentice chose the latter, and accordingly did go, and resided above forty days there. It was decided by the court of B. R. that this was a suspension of the apprenticeship for the time, that the service did not continue while the apprentice was at school, and that therefore no settlement was gained by his forty days' residence at the parish in which the school was situate.*

Residence for
forty days
necessary.

Forty days is, in *all* cases, the residence necessary for gaining a settlement, which is by inference, from the statute making settlements depend on residence; for it enacts, "that churchwardens and overseers may obtain the removal of any person coming to inhabit, and not renting to the amount of ten pounds *per annum*, upon complaint to the justices *within forty days after such person shall have so come to settle*;"† the necessary inference from which is, that, *after* a residence of forty days, such removal shall not take place, or in other words a settlement will have been gained; and by a subsequent stat. ‡ apprentices, bound by indenture, are excepted out of the former provision for removal.

Construction
of contracts.

It has been already shewn, that residence under a contract for an apprenticeship will not confer a settlement, if the contract itself was originally defective. And the construction put by the court of B. R. on these contracts is this, viz. that one party contracting to teach, and the other to learn, a trade, shall be construed an apprenticeship; and that nothing but the clearest intention in the parties to make the service contracted for one of a different description, shall controul the construction, or take it out of the general rule.

Two con-
tracts; one
good for
service, and
the other
bad for ap-
prenticeship.
The effect.

However, it has been decided, that if there be a valid contract for a hiring and service, which is afterwards attempted to be converted into an apprenticeship, but the contract for such conversion turn out to have been deficient,

* R. v. St. Mary, Bradin, 2 Barn. & Ald. 382.

† 13 & 14 Car. 2. c. 12.

‡ 3 W. c. 11.

it shall not cancel, or do away, the former valid contract : but if the term of service, originally contracted for, have been performed, a settlement shall be acquired under such contract for hiring : * and the converse of the proposition is equally true, viz. that if there be a valid contract for an apprenticeship, which is afterwards attempted to be turned into a hiring and service, that the latter should be with the consent of the master, party to the indenture ; for if he do nothing either to put a legal conclusion to the apprenticeship, or regularly assign the apprentice, the former contract is not invalidated by the latter. As where the master of several apprentices, on quitting business, proposed to assign all his apprentices to J. S., but an assignment was not made. The pauper, one of the said apprentices, was afterwards hired by J. S. as a servant for fifty-one weeks, and her former master on meeting her, expressed his approbation of her having gone into the service of J. S. The session found that there was no particular assent of the original master to the second service, and therefore it could not operate as an assignment of the apprentice, and that the contract with J. S. could not operate as a hiring and service, because the indentures were not put an end to, so as to admit of the pauper legally entering into service. †

An indenture of apprenticeship may be assigned from master to master, through any number successively ; and if the original contract were valid, and the assignments are regularly made by each master in succession, the residences under them for the purposes of settlement, will be governed by the same rules, as if the apprentice had continued in his first place of abode under the indenture. But though the assignment may be by parol, it must be express, and for a particular service, not a general leave or licence to serve any one, at the discretion of the apprentice : for such permission, and service, will not amount to an assignment, and therefore cannot obtain a settlement. ‡

* 14 E. R. 541.

† R. v. Ashby, De le Zouch, 2 Barn. and Ald. 115.

‡ 3 T. R. 605.—1 E. R. 63, 73.

And an assignment by the executor of a master, will have the same effect, as by the master himself.* By 32 Geo. 3. c. 57. Provision having been made for the assignment of parish apprentices, on the decease of their masters or mistresses, to the widows, or husbands, son or daughter, brothers or sisters, executors or administrators respectively of such deceased masters and mistresses; it was determined, that an apprentice, *though living with the son of a person to whom he was originally bound*, by that person's individual consent at the time of such person's decease, if not so living with him *as apprentice*, regularly appointed according to the specific provisions of the statute, or as the words are, *by virtue of it*; cannot gain a settlement in another parish, by serving another person, with the mere consent of the son and assignee of such first master or mistress, unless *continued* in the precise manner directed therein. Lord Ellenborough, C. J. observed that the words "*subsequent master or mistress*" mean such as become so by the provisions of the statute.†

Assignment by deed.

It has been observed, the assignment may be by parol; but if it be by deed, it must be governed by the same rules of evidence, when offered in proof, as the original indenture; that is to say, it must be stamped, and having been reduced to writing, must be produced, and cannot be proved by parol testimony.‡ But after a great lapse of time, a legal assignment by indorsement may be presumed; as where J. G. was bound apprentice in 1764, in the township of C.; and in 1767, on the death of his master, was assigned by his widow by indorsement on the indenture. Under this indorsement, which was before a stamp was necessary, J. G. the apprentice served his time in the township of K., which township had relieved the family of J. G. residing in another parish. After such a lapse of time, (more than forty years) the court of B. R. thought the session might presume every thing; as that the widow was *executrix*, and *had a right to assign*; and that pauper's settlement was in K.§

* Cald. Ca. 60.

† R. v. Sheepshead, 15 E. R. 59.

‡ 6 Term R. 452.

§ R. v. Barnsley, 1 M. & S. 377.

THE PREMATURE CONCLUSION, &c.

The master becoming a bankrupt does not of itself operate Bankruptcy of as a dissolution of the apprenticeship, or discharge the in-master.
 indentures;* nor does an agreement to cancel them, on a Agreement to sum of money to be paid by the apprentice at a future time, cancel, and and an abandonment of the master by the apprentice, in entering the King's service. consequence of such agreement;† nor even a voluntary entering into the king's service, the master not prohibiting it, but not giving up the indenture.‡ But where the apprentice and his master *were the only contracting parties* to the indenture, the apprentice being under age; the master after a year's service *ran away*, and agreed that the indenture should be given up, which was done: this being so manifestly for the interest of the apprentice, his acceptance of the indentures was decided to be a sufficient dissolution of the contract, and he was at liberty to go into another service, and was capable of obtaining a settlement by so serving.§

But apprentices, with whom less than five pounds has Regulations been given, may be discharged by two justices from any by stat. for master who is so far reduced in circumstances as to be discharging apprentices. unable to keep or employ such apprentice.||

Also an indenture of a *parish* apprentice may be put an end to by *all* parties; that is to say, the master, the apprentice, and the parish officers, consenting; but not otherwise. Also by the master and the apprentice only, *the latter being of full age*, but not otherwise; for though an apprentice under age may *bind* himself, being a contract necessarily for his advantage, and a case excepted out of the general rule of law respecting infants, the consent of an infant alone to his *discharge*, is "no consent at all."***

The master assigning, and the apprentice consenting, without the approbation of two justices, will not make an apprenticeship within the statute of Elizabeth, according to Dalton.†† We learn by a decision just cited, that the assent

* 2 Bott. 395.

† 8 Term R. 108.

‡ 2 Bott. 402.

§ R. v. Mount Sorrel, 3 M. & S. 497.

|| 32 Geo. 3. c. 37.

** Burr. S. C. 462.—1 Black. R. 592.

†† Dalton, c. 58.

of the apprentice adds no authority to the assignment; and it appears from the general current of recent authorities, that these apprenticeships being compulsory, it is the assent of the overseers that gives the validity to all acts on the part of *infant parish* apprentices; but since by the statute 32 Geo. 3. masters, by the consent of two justices, may assign these apprentices, and their executors, &c. may assign within three months, upon similar conditions, which power is usually exercised, the premature conclusion of the contract by death, is rarely the source of any litigation.

How these
regulations
apply to
settlements.

All these cases indeed, would be of no importance to the particular subject matter of this section, except that the question "whether an indenture continues in force, or is cancelled," and therefore the inferential question, "whether an apprentice serving in another place, than that to which he was originally bound, is to be considered as discharged from his indenture and *sui juris*; or whether he be serving under the indenture, and in the implied service of his original master," is often of essential importance for the determination of Appeals respecting the settlements of such apprentices in the actual employ of other, than their original masters.

After what has been premised under the consideration of evidence, and especially that portion which treats of copies of deeds, and of the application of parol testimony to prove the existence of written documents, it will be sufficient to observe here, that,

The sessions may receive parol evidence of an apprenticeship, if the indentures be destroyed, or cannot be found, or produced. And if the opposite party produce an indenture, on notice given to them for that purpose, it may be read without any proof of the execution: this was formerly *vexata questio*, but it has been of late fully established. In civil actions, where a plaintiff wishes to give, in evidence, a deed in the defendant's custody, he gives the defendant notice to produce it: and the deed, when produced, must *prima facie* be taken to be duly executed, because the plaintiff, not knowing who are the subscribing witnesses, cannot come prepared at the trial to prove the

execution. Therefore an instrument coming out of the hands of the opposite party, must be taken to be proved.*

HIRING AND SERVICE is the next mode of superseding the settlement by birth or parentage, which presents itself for consideration; because it is that which, next to apprenticeship, generally occurs earliest in life to that rank of persons who are the objects of the law of settlements.†

Keeping in mind the statutes of Charles, before introduced, respecting a residence of forty days without removal, which is, in truth, the *foundation* of all kinds of settlement arising out of residence, the subsequent statutes on the subject will be found to be only so many exceptions made, from time to time, to its provisions.

A cursory reader would probably think the original statute itself, and those which were made to restrict its operation, spoke so plainly the intentions of the legislature, and formed so intelligible a system, that no doubts could arise upon their construction; however, the fact is, that no head of settlement has given occasion to so many difficulties, and to so great a variety of interpretations.

By 3 Will. & Mar. c. 11. "If any *unmarried person*, not having child or children, shall be lawfully hired into any parish or town for one year (and shall continue and abide in the same service during the space of one whole year, by 8 & 9 Will. 3. c. 30.) such service shall be adjudged and deemed a good settlement therein, though no notice, in writing, be delivered and published, &c."

But by 9 & 10 Will. 3. c. 11. "No person, who shall come into any parish by *certificate*, shall be adjudged by any act whatsoever to have procured a legal settlement in such parish, unless he shall *bond fide* take a lease of a tenement of the value of ten pounds, or shall execute some annual office in such parish," (and of course not by a hiring and service).

And by 12 Ann. st. 1. c. 18. "If any person shall be a hired servant with any person who did come into, or shall

* 2 T. R. 41.

† See Pract. Expos. *title*, POOR. sub. 3.

reside in, any parish, township, or place, by means or licence of a certificate, and not afterwards having gained a legal settlement in such parish, township, or place, such servant shall not gain any settlement in such parish, township, or place, by reason of such hiring or serving therein; but shall have his settlement in such parish, township, or place, as if he had not been an hired servant to such person." s. 2.

Also, by 33 Geo. 3. c. 54. "No person who shall be a hired servant to any person who did come into, or shall reside, in any parish, township, or place, under a certificate from a benefit society, and not afterwards having gained a legal settlement in such parish, township, or place, shall gain any settlement in such parish, township, or place, by reason of such hiring or serving therein; but all such servants shall have their settlements in such parish, township, or place, as if they had not been hired to such person as aforesaid."

Construction
of the words
"unmarried
persons."

The first deviation from the obvious interpretation of the former of these statutes, was on the term "*unmarried persons*." And it has been decided in many successive cases, that a *widower*, although he have children living, may gain a settlement by hiring and service, provided those children are emancipated, and have gained settlements in their own right.*

And if a married man agree *conditionally* to become the servant of another, and before a definitive agreement take place, the wife die without issue, he will gain a settlement by a hiring and service for a year.†

And a marriage *after* the hiring, and during the service, will not prevent the servant from gaining a settlement; for marriage does not hinder the service, and the contract continues; therefore if the man perform his service, he gains a settlement.‡

Once for all, let it be observed, that if the words of the

* 2 Bott. 177, *et ante*, p. 545.

† Burr. S. C. 455.

‡ 3 Term R. 382.

statute be but complied with, respecting *the contract*, and *the service* under it, according to the interpretations put upon them by the courts, the *relation*, in which the contracting parties *stand to each other*, is of no importance whatever.* Thus a child may gain a settlement by a hiring by, and a service with, a father or mother, who has not one.† And it is not necessary that the master should reside in the parish where the servant performs his service.

The next question which has been agitated, has been *The hiring.* "what shall be construed a hiring?" When done by express words, it admits of no doubt; but *constructive* hirings were admitted, and then the latitude given to interpretation was almost unbounded.

Thus it has been decided that any contract which purports *General hiring.* to be a *general hiring*, without any limitation of time being mentioned, shall be interpreted a hiring *for a year*.

And moreover, that if there be only actual service *Hiring raised by implication.* proved, where the nature of the service is such as *necessarily* implies a hiring, the courts of law will raise such implication.‡

The very words of the court of B. R. in modern cases will be sufficient on this part of the subject.

"The general rule is, that an *indefinite hiring*, without *Indefinite hiring.* any circumstance to shew that a less time was meant, shall be considered as a hiring for a year."§

"All that is necessary to give a settlement under the statutes is, that there should be a hiring for a year, and a service for a year. There must therefore either be an express, or an implied, contract for a year, in order to give the servant a settlement. And an express hiring for eleven months will not confer a settlement, unless the sessions find that it was fraudulent, and that a year's service was intended, though only eleven months were expressed."||

* 2 Term R. 37.—2 Bott. 204.

† 2 Bott. 204.—Chesham v. Misenden, 2 Bott. 178.—Idem 274.

‡ Burr. S. C. 823.—5 T. R. 447.

§ Cald. Ca. 440.

|| 3 T. R. 76.

But the party hiring himself must be in a situation to be able to make such a contract; and his ability so to do, has not unfrequently been the subject of litigation. Thus, where a soldier in the king's service, liable at all times to be called upon active duty, hired himself for a year, it was made a question in B. R. whether he was in a situation to make such a contract? and the judges were divided upon it; but the following remark of Bayly, J. is well worth attention. "I do not find it in the act of parliament," said he, "that there must necessarily be, an *indefeasible*, but only a *lawful*, hiring;" and what gives great countenance to the inference to be drawn from this observation of the learned judge, is, that in a case shortly after in the same court it was decided, that a person precisely circumstanced as the pauper in the above case, may contract for the renting of a tenement, and should be construed, conformably with the statute 13 & 14 Car. 2., to take it *cum animo morandi et manendi*. See *post*. *

Hiring to work by the piece. But if it appear that the servant was hired *to work by the piece* this shall not be considered as a general hiring for a year.†

By the week. So, if it appear that the servant was hired *as a weekly labourer*, it shall not be considered as a general hiring for a year.‡

And where nothing is said, in a contract of hiring, about the *time*, but a reservation of weekly wages, it is a weekly hiring only.§

Hiring indefinite wages reserved weekly. But although the hiring be at so much *per week*, yet if the hiring was *intended* to be *for a year*, or if it appear from circumstances to have been *general*, the reservation of weekly wages will not controul that hiring.||

After the subject of general hirings had been pretty well disposed of, then *special* hirings, and *conditional* hirings, and *customary* hirings, became subjects of controversy. On these points a few determinations will be sufficient.

Special hiring. A hiring *for a year*, to be *paid* according to the work

* R. v. Bealieu, 3 M. & S. 229.

† Burr. S. C.

‡ 2 T. R. 453.

§ 5 E. R. 582.

|| 4 T. R. 245.

done, is a good hiring, and the service for the year under it completes all that the statute requires.*

So, a hiring for three years, at so much *per week*, to work twelve hours, and to be paid for *extra* hours, is a good hiring.

So, hiring for eleven months, and to give the master a month's service in, beyond the eleven months, is a good hiring for a year. The real question is no more than; "Whether eleven months, and one month, make twelve months?" There are no particular technical words necessary to make a hiring for a year. The *substance* of this agreement is, to serve twelve months, and what signifies the variation of expression? Every contract to serve, is a contract to serve for a year, unless there be something to explain it otherwise.†

So, if the servant be hired for a year, with permission to be absent for a month to attend his duty in the militia, *upon finding another to do his master's business*: a service under this hiring will gain a settlement. ‡

But where a servant in husbandry was hired to serve, at certain weekly wages, *for an indefinite time*, which wages were *in harvest month to be increased*, and lowered again after the expiration of harvest, and continued to serve under this hiring for eighteen months, it was decided to be no hiring by the year to gain a settlement. There did not appear on the face of the contract any obligation to continue together longer than from week to week; and as to the inference of a hiring for a year, from the *general words* of the contract, it was rebutted by the circumstance of there being a variation to be made *in the harvest month*, without ever saying *for the harvest month*, from which latter expression, had it been used, perhaps an inference might have been drawn, that it could not be a *weekly* hiring. §

So, if it be the custom of the country to let the servant have every *Sunday* and *holyday* throughout the year to himself, the servant, notwithstanding he use this *Conditional hiring*.

* Burr. S. C. 152.

† Burr. S. C. 433.

‡ Id. 753.

§ R. v. Dodderhill, 3 M. & S. 243.

lege, will, on a hiring for a year, and by serving that year, gain a settlement.*

And a clerk in a mercantile house hired by the year, but serving only during the usual hours of business, thereby gains a settlement, although those hours did not, by the general custom of the trade, ever occupy the whole day, and he went wherever he pleased, without asking his master's leave when those hours were over.†

But if, *upon the hiring*, it be *agreed* that the service shall be only during certain hours in the six working-days, and that all the rest of the time, as well as on *Sundays*, the servant shall be at liberty and his own master, this is not a good hiring for a year.

So, if it be *agreed, on the hiring*, that the servant shall be at liberty to serve elsewhere for the harvest month, this is not a good hiring for a year.‡

As, where a pensioner of the East-India Company hired himself as a servant for a year, with a reservation to himself of two days in each half-year, in order that he might go for his pension, he was held not to have gained any settlement by a service under such contract: for, by the court, "here was an *express exception* of four days in the year, during which the pauper was not to be under the controul of the master."§

Customary
hiring.

A hiring for a customary year, as from *Whitsuntide* to *Whitsuntide*, such hiring being intended for a year, and so considered by the parties, is a good hiring for a year, although it fall short of three hundred and sixty-five days. ||

So, if the pauper be hired at a fair held the day immediately after *Old Michaelmas*, to serve till the *Old Michaelmas-day* following; this will be a sufficient hiring for a year, for the days shall be taken inclusively.**

For, as it was observed by Lord Mansfield, in the case

* Id. 671.

† R. v. All Saints, Worcester, 2 Barn. & Ald. 322.

‡ Bur. S. C. 439.

§ 1 E. R. 599.

|| 1 T. R. 694.

** Burr. S. C. 719.

which is here selected in support of the doctrine advanced, "there must be a hiring for a year. It has been determined, that a hiring from one moveable feast to another, is a sufficient hiring, being according to the custom of the country, although there should not be three hundred and sixty-five days: on the other hand, a hiring two days after *Michaelmas* to the next *Michaelmas*, has been determined no good hiring; and therefore the question is, whether here was a hiring for a year? Great criticism has been made on the word *till*; it may, or may not, be exclusive, according to the subject matter. Here the custom is very material to explain it; the custom is to hire from the next day after *Michaelmas*. If this be wrong, there can be no settlement gained in this part of the country by a servant."

But in another case, (in perfect conformity however with the last, if the discrimination be properly attended to) a different conclusion was drawn. The pauper went to the market-town of *Otley*, where there is a custom for servants to hire by the year, at two different *statutes*; one held on the *Friday before Old Martinmas-day*, the other on the *Friday next after Old Martinmas-day*; at which latter fair, they always hire till the *Old Martinmas-day* following, which by the custom is considered as a hiring for a year. *Old Martinmas-day* 1774, was on the *Tuesday*; and on the *Friday* following, being the *second statute-fair*, the pauper hired himself to serve a person in *Harwood*, till the *Old Martinmas-day* following; which person he accordingly served in *Harwood* till the *Old Martinmas-day* following.—This being an hiring for three days less than a year, the court were clearly of opinion, that this was not a sufficient hiring for a year; and Buller, J. observed, that "there is no case in which a hiring, which must necessarily be less than a year, has been adjudged to give a settlement," and it would be dangerous to make a new precedent of that sort; all the cases agree that there must be a hiring for a year." *

* Cald. Ca. 100.

But when a pauper agreed to serve as a brickmaker, from *Michaelmas* to *Michaelmas*, and to make 70,000 bricks at a stipulated price per thousand, it was held that this was no hiring for a year, no absolute contract for time, but merely a contract to serve *till* a certain quantity of bricks should be made, which was the completion of the job, and that such a hiring did not gain a settlement.*

In estimating the precise value of the word "*until*" it is necessary to observe further, that, not only the circumstances of the particular case must be the guide of interpretation, but that, (as was said by the court of B. R. on another case,) there is no fraction of a day, and therefore a settlement will be complete where the minutest part of a day being included will make up the year's service, or three hundred and sixty-five days.†

Retrospective
hiring.

A retrospective hiring cannot be admitted in any case to make a settlement, for it would be nonsense to make a contract for a time past. And, on a point so obvious, a single authority will be sufficient, especially as it was one which has always been relied on, in cases of this description.

A gentleman of the parish of *Ilam*, hearing that the pauper was a likely boy to serve him as his postillion, sent to have him upon liking. After the pauper had served eight weeks on liking, his master hired him for a year, to commence from the beginning of the said eight weeks. He accordingly served his master in the said parish of *Ilam*, including the said eight weeks, a year and ten days, and no longer. The court held this case to differ from all former cases. The question was, whether here be a hiring for a year? it is agreed, that there must be a hiring for a year, and a service for a year, to gain a settlement, and that a retrospect will not do; which latter is the case here; for the lad came upon liking; and at that time there is nothing stated of a hiring, during which eight weeks both parties were at liberty.—They therefore held this to be no settlement.‡

* R. v. Woodhurst, 2 Barn. & Ald 325.

† 1 T. R. 490.

‡ Burr. S. C. 304.—Cald. Ca. 23.

But a hiring for a quarter of a year, and if the master and servant like one another, to *continue* for a year, is a good hiring for a year, for the court held the conditional hiring to be a good hiring for a year; because the master and she did like one another, and a year's service was actually performed under it.*

But though the hiring be allowed to be conditional, and if the condition be performed to be good, yet it must be by an entire contract for a year, and not two contracts for two half years; for if it were so, one that was hired by the month only, if he continued in the same service for twelve in succession, might be supposed to gain a settlement.†

But a service for a year, though it be under different hirings, is good, *if one of the hirings be for a year*, as where the pauper was hired to serve from *Lady-day* to *Christmas*, which he did, and was then hired by the same master for a year, and served under this second hiring until the end of *May*, making in all above a year.—This was adjudged sufficient to gain a settlement. And even when a pauper bound apprentice, before the expiration of her apprenticeship, hired herself and served for a year, the *four last months of which* were after her indentures had expired, and then hired herself to the same person for another year, but served only ten months, it was holden by the court of B. R. that the first service (although without the knowledge or consent of the master) might be coupled with the service of the last contract, and that the pauper thereby gained a settlement.‡

And it was also determined that a service *under a hiring* for fifty-one weeks, might be coupled with a service under a previous hiring for a year, so as to confer a settlement.§

But there is such an infinite variety of cases of this kind, that the insertion of one, though not the most recent, which was much considered, must serve by way of exposition to the substance of the general doctrine. Its immediate purpose, is to shew the principle on which these determi-

* Id. 299.

† 10 Mod. 392.—2 Bott. 264.

‡ R. v. Dawlish, 1 Barn. & Ald. 280.

§ R. v. Fillongly, id. 319.

nations, that the service under an *imperfect hiring*, may be connected with the same service under a *perfect hiring*, although under such perfect hiring there may not have been a residence of forty days.—It was *R. v. Adson*, *Hil.* 33. Geo. 3. The pauper was hired in *Church Stow* eight days after *Old Michaelmas* to the *Old Michaelmas* following; and continued in his master's service till the day after *Old Michaelmas-day*, when he was hired by his master till the *Michaelmas* following, and under that hiring *he only served ten days*.—By Lord Kenyon, C. J. “Upon one point of this case there can be no doubt, that, to gain a settlement, *the service for a year need not be under a hiring for a year*. Whether that question was rightly decided originally, or not, it is now too long settled, and has been too often recognized, to be again disturbed. I have always considered it as equally settled, that if there was an hiring for a year, constructive service for a year, and a residence for forty days, that it was sufficient to confer a settlement; and I have never heard it advanced, previous to the present case, that the service for forty days must be subsequent to the hiring for a year. That this has been the general understanding upon this subject, it is fair to suppose, since no case has been adduced to support the contrary position.” The case stood over for further argument; but afterwards Lord Kenyon declared, without any further argument, “that the court were of opinion, that the pauper had gained a settlement in *Church Stow*; although there had not been a service of forty days *subsequent* to the last hiring.”*

Discontinu-
ance of service.

But where the hiring is imperfect, and there is a *complete and absolute discontinuance* of the service under it, such service cannot be coupled with a service under a new hiring for a year, for the purpose of gaining a settlement. This has produced many questions as to what shall operate as a complete and absolute *dissolution* of a contract and a discontinuance of service under it, and the whole doctrine of *dispensations* of service; a doctrine introduced, as it was

said, in favor of settlements. The cases on this particular branch of the general question are so numerous, and the points of discrimination between them, from which opposite conclusions have been drawn, so nice, that only a few of the most modern determinations shall be given. It must, however, be premised generally, that, though there be a separation, without a *bond fide* dissolution, such as will entitle the servant legally to enter into a new contract without being liable to an action by his master, it cannot be considered a dissolution, but a mere dispensation.* Thus when a yearly servant ran away from his master, and was absent thirteen weeks, and then his master apprehended him, and took him back again till the end of the year, for which he had been fined, although there was a deduction made by agreement for the time of the servant's absence, yet as he staid till the year for which he was hired was completed, and *that* under the original contract, not under any new one, this absence was decided to be a *dispensation* only.†

So when a yearly servant was imprisoned at the instance of his master, in a house of correction for a month, but returned to his service at the instance of the master, making no new contract, but *continuing* to serve under the original one, till the completion of the year's service, although wages were deducted for the time he was in prison, it was determined to be a dispensation, and not a dissolution; for the master made his election not to dissolve the contract, which perhaps he might have done on the imprisonment of the servant, but not having so done, the latter was not at liberty to form a new contract.‡

But when one hired a servant for a year, who continued with him till a month before the expiration of it, when the master giving up his farm, discharged all his servants, paid them the whole year's wages, but told them they were at liberty immediately to enter into new contracts whenever they could get places, and the pauper did actually immedi-

* R. v. Pyon, 4 E. R. 454.

† R. v. Shefford. 4 T. R. 804.

‡ R. v. Burton, 2 M. & S. 329.

ately form a fresh contract and go into a fresh service, and *that* too with the knowledge of the former master: This was held not to be a dispensation, although the year's wages were paid, but a dissolution.*

But where a pauper being hired for a year, and having served till within a few days of that time, went without leave to a statute to hire himself for next year; and on the master dismissing him for that act, went before a magistrate with his master, and then offered to serve out his year; but upon receiving his full wages by the magistrate's order, he was satisfied, and did not return to his said service, but neither hired, nor offered to hire, himself into any fresh service till the year expired: This was holden only to be a dispensation; for by the magistrate ordering the whole wages to be paid, it was clear the master was in the wrong, and had no right to turn his servant away, or in other words to dissolve the contract. Nor is there any thing to shew that the servant understood his absence in that light; and there *must be either mutual consent, or a wrongful act by the servant, sufficient to justify a forceable dissolution*, to have the effect of dissolving a service. This therefore only operated as a dispensation of service. †

It was long holden that *two* requisites were necessary for joining two services, so as to acquire a settlement, viz. that there was to be no discontinuance or chasm between them, and *also* that they were to be services *ejusdem generis*. The latter point, however, is now exploded; but they must still be united services; that is to say, one must not be entirely concluded and done away with, so as to produce an interruption between that and the commencement of the next. Two cases on this subject must suffice, by way of example, because they refer to both these points.

The pauper being settled at S. was hired the latter end of *November*, to one Welch of W. till *Michaelmas* then next, at 6*l.* 10*s.* wages. Two or three days before *Michaelmas*, the master offered him the like sum for the year ensuing, which the pauper did not think sufficient. On

* R. v. Bray, 3 M. & S. 20. † R. v. Pollsworth, 2 Barn. & Ald. 483.

Michaelmas-day the master offered him seven guineas, and they had agreed for wages, all but the expence of washing. The servant had no intention of leaving his master, and he believed his master had no intention of parting with him. He continued in his master's house, and did what was to be done as usual, but without any obligation, lodged at his master's house, and did not remove any of his clothes, or offer himself to any other master, nor did his master seek after another servant. He thought himself at liberty to have left his master if any better hiring had offered. He did not agree with his master on this day; but *the day next but one*, being the *second day after Michaelmas*, the pauper agreed to accept the seven guineas as before offered him for the year ensuing. He did not expect that his wages were to be due on the following *Michaelmas*, but at the expiration of the year from the day he agreed with his master to accept the seven guineas; and he continued in the service till the *Whitsuntide* following.—Ashurst, J. "I think this was a good service in *W*. All that the statutes require is, that there shall be a hiring for a year, and a continuance in the same *service* for a year. If so, the only question is, whether there was any discontinuance? It appears from the case that there was not; for the servant continued in the same capacity; he did his work as usual; and if he had continued to serve for half a year without entering into any new contract, he would have been entitled to a compensation for such service; the law would have implied, that he continued under the former agreement, and would have measured his damages by his former wages. Then he must be taken to have been in the capacity of a hired servant during that time."—Grose, J. "Two services cannot be joined if there be a chasm between them, or if they be not *ejusdem generis*; but in the present case, there was no chasm, and the services were *ejusdem generis*." *

The pauper having a settlement in C. hired himself to a person of S. as a *weekly* servant. Nothing was said about

* 1 T. R. 778.

Sunday, but he occasionally worked on that day. He received his wages weekly, and boarded himself, not being resident in his master's house. Thus he continued nine months, when a *family servant* going away, the pauper was hired in his place *for a year*, and served eleven months under that hiring. The questions, on a special case, were, whether these services, one before the hiring for a year, as a *weekly labourer*, and the other after as a *house servant* could be coupled, so as to make a year's service, connected with the hiring for a year, under which hiring there were in fact only eleven months.—Secondly, whether two services being of such *different kinds* could be coupled at all. Lord Kenyon said, "it had been too long settled to be brought again into question, that if there be but a *hiring for a year* and a *service for a year*, however small a part of the latter be actually performed under the former, a settlement will be gained. As to the weekly service, if no exception of any one day were made, there was no pretence for saying *that day* was necessarily excluded, and in this case the servant occasionally doing work on a Sunday, shewed that he was considered under his controul on *that day* as well as the *others*. It cannot even be collected from circumstances, that Sunday was *intended* to be excluded.

Services need
not be *ejusdem*
generis.

"As to services being *ejusdem generis*, where is the line to be drawn? Would a postillion being made a coachman, be a service *ejusdem generis*? There was a *continuing* service for a year, and there was during the time a hiring for a year, and therefore a settlement was gained." *

Servant must
be in a capa-
city to make a
second con-
tract.

In order to connect services in successive years, the servant must be unmarried at the commencement of the succeeding year; for if he be married he is incapable of making a new contract that shall give him a settlement, though marriage would not have defeated a contract made previously. †

So, if a servant being hired for a year, be rendered incapable of entering upon his service at the time when it is

* 1 E. R. 656.—2 Bott, 272.

† Cald. Ca. 54.

to commence, by reason of sickness or otherwise, and the master therefore refuse to receive him, the serving under a *new* agreement for less than a year shall not be connected with the original hiring, for the purpose of giving a settlement.*

Another doubt, which has been raised, was, with respect to the place where the service was performed, it being assumed that the hiring was regular, and a year's service actually performed. But numberless decisions have been made to the effect that, Places of performing service may be different.

If a servant serve half a year in one parish, and then remove with his master, and serve the other half year in another parish, he gains a settlement where the last forty days are served.

Thus, where the pauper covenanted with one H. J. then of H. to serve him in husbandry, for a year; and, in pursuance of the said contract, lived with him there for three quarters of a year, and then went with his said master into the parish of C. where he lived with, and served him, the rest of the year.—The court were clearly of opinion, that the pauper had hereby gained a settlement in C. †

And the forty days need not be forty days successively; for, if the residence of a servant be alternately in two parishes, but he do not continue *successively* for forty days in either, but more than forty days *interruptedly* in both, he shall gain a settlement in that parish in which he last served. Thus, where a servant was hired for a year in the parish of Fetcham, and, after forty days serving, married, and from that time slept with his wife every night for the remainder of the year in the parish of Great Bockham, except the last, when he slept at his master's in the parish of Fetcham.—It was held, that his settlement was in Fetcham.‡ The 40 days need not be successive.

But if a servant hired for a year marry in the middle of the year, and then agree to serve his master, *in a different capacity, for a year from that time, at different wages, and to live out of his master's family, but at another farm be-*

* Cald. Ca. 238.

† 2 Sess. Ca. 137.

‡ Cald. Ca. 290.

longing to his master in the same parish, this is a dissolution of the original contract, and the servant *being married* at the time of entering into the second, does not by his service gain a settlement; for, as was observed by one of the judges, "this is not a prolongation of the original contract, but *entirely a new one*, to commence at the time when such new one was made." *

But if there be a hiring for a year, and the service be continued beyond the year, without any new agreement, the servant shall be settled in the parish where he resides with his master the last forty days.

And if the master remove into another parish, and before the servant has resided there forty days, his time of service expire, the service under a new hiring for another year, shall be considered as a continuation of the former service, and connected with it, so as to entitle the servant to a settlement in that parish to which his master removed, although he may not have served for a whole year under such second hiring. †

Service by
assignment.

If the servant, having performed part of his service with the original master, be permitted by such master to serve out the remainder with another person, this shall be a good service to gain a settlement; for, as was said by the court, "If a master lend his servant to a neighbour for a week, or any longer time, and he go accordingly, and do such work as his neighbour sets him about; yet all this while he is in the first master's service, and may reasonably be said to be doing his business; and here being no *new* contract, it is carrying on the service of the first master; and the second master paying the last half-year's wages, does not alter the case; for the contract not being dissolved, he might have brought an action against the first master." ‡

With an executor.

So a service with the executor of a master for the remainder of a year, will be sufficient to gain a settlement.§

* 5 T. R. 672.

‡ 1 Str. 90.

† Cald. Ca. 65.

§ Burr. S. C. 179.

And an absence created by the default, or fraudulent contrivance, of the master, shall not prevent the servant's gaining a settlement. *

Fraudulent contrivance to defeat a settlement.

So if a servant fall sick, absence on that account will not prevent the gaining of a settlement.

Absence on account of sickness.

And a servant who is rendered incapable of performing his service, by being deprived of his reason forty days before the end of the year, and who is taken to his father's house, and resides there during the remainder of the year, does not, by this casual residence, gain a settlement in the parish where his father lives, but his settlement is in his master's parish. †

But if the absence be occasioned by the default of the servant, as has been already observed, it will prevent the settlement.—Thus, if a person hire a female servant, and before the year's end she is got with child, and that child is likely to be born a bastard, this is good cause to discharge her of her service; and if the master discharge her for this cause, she may then be removed to the place of her last legal settlement, but not otherwise; for if the master is willing for her to continue in his service, she cannot be removed therefrom upon any complaint of the parish officers, the justices having no authority to dissolve the contract between the master and servant, by which the latter is bound to serve the former if he insist on it. ‡

Willful absence.

But if a servant, before the expiration of the year, request leave of the master to go into another place, to which he is hired, and the master consent thereto, and pay him his whole year's wages, that is a dissolution of the contract, and prevents the gaining of a settlement.

Dissolution by consent.

And where the servant is absent with the leave of his master, he shall be settled in that parish where he sleeps the last night, provided he has served there forty days in the course of the year. §

Last night's lodging designates the place of settlement.

But the whole residence must be within the compass of a year, for, said the court of B. R. in the most recent case on this subject, "It would be neither reasonable, nor ex-

Residence must be within the compass of a year.

* 1 Str. 526.

† 5 T. R. 657.

‡ Cald. Ca. 57. 495. 562.

§ 5 T. R. 387.

pedient, that an inquiry should be gone into over a long period of time, at detached intervals, to ascertain a settlement." *

The points however, that have been made upon settlements, since the introduction of *constructive* hirings and constructive services, have been so numerous and diversified, that the nature of this work forbids us to urge the subject further. We therefore pass on to the next head of acquired settlement, which, in the common course, may be presumed generally to be,

Settlement by marriage.

MARRIAGE; of which a more restricted examination is all that is necessary, inasmuch as, being a mode of settlement not liable to constructive interpretations, general rules are sufficient for illustration.

1. A woman marrying a man with a known settlement, shall follow it, and *that* even if she did not live there with him.

2. A wife can gain no new settlement for herself during coverture.

3. A woman marrying a man with no settlement keeps her own.

First then, where the marriage is *legal*, the settlement of the husband shall, by the intermarriage, be immediately communicated to the wife; for wherever the husband is settled, there the wife must likewise be settled.

This being an admitted principle without exception, the only question it involves, that admits of being controverted on an appeal, is the legality of the marriage under which the settlement is claimed.

Marriage act.

By 26 Geo. 2. c. 33. "all marriages solemnized after 25th March, 1754, in any other places than a church or public chapel *where bans have been usually published*, unless by special licence from the Archbishop of Canterbury; or that shall be solemnized without publication of bans, or licence of marriage from a person having authority to grant the same, first had, shall be null and void to all intents and purposes whatsoever." s. 8.

* R. v. Denham, 1 M. & S. 222.

"Also all marriages where either of the parties, not being a widower or widow, shall be under the age of twenty-one years, which shall be had without the consent of the father, or such of the parties, so under age (if then living) first obtained, or (if dead,) of the guardian of the party, and in case there shall be no such guardian, then of the mother (if living and unmarried;) or if there shall be no mother living and unmarried, then of a guardian appointed by the Court of Chancery; shall be absolutely null and void to all intents and purposes whatsoever.

"But this act shall not extend to the marriage of any of the royal family; neither shall it extend to Scotland, nor to any marriages amongst the people called Quakers; or amongst the persons professing the Jewish religion, where both the parties to any such marriage shall be of the people called Quakers, or persons professing the Jewish religion respectively, nor to any marriage solemnized beyond the seas." s. 17, 18.

Marriages contrary to the provisions of this statute being declared void *to all intents and purposes whatsoever*, are of course void to the purpose of settlements, and neither can a woman herself, nor her children of such a marriage, obtain any settlement under, or by virtue of it.*

And the words, "all persons," in the provisions of the act, as to the consent of certain parents, guardians, &c. being necessary, are so comprehensive as to comprise illegitimate, as well as legitimate children. †

Although the statute does not extend to Scotland, it was Scotch marriages. long doubted whether English parties, going to Scotland for the special purpose of avoiding the restrictions of English laws, could be legally married. But in many recent cases such marriages have been decided to be good, and therefore must be held to confer a settlement. ‡

And although the marriage be procured by fraud and conspiracy, it will be good for the purpose of acquiring a settlement; § but the person so procuring it, will be liable to be indicted. ||

Black. R. 192. + 1 T. R. 96. ‡ Ex parte Hall.—1 Rose's R. 30.

§ 1 Sess. C. 165.

|| Cald. Ca. 249.

Proofs of marriage.

Cohabitation as man and wife for a series of years, is such presumptive proof of marriage, as will give the children a *prima facie* title to the settlement of their parents.*

And the proof of a marriage *in fact* is *prima facie* sufficient: and it is incumbent on the party who would impeach it, to shew wherein it is defective.

Polygamy.

The frequent migrations of our soldiers within the last thirty years, and the numerous instances of marriages contracted by such persons, their former wives being alive, renders a few words on polygamy necessary, inasmuch as the settlements of the children of such marriages may become the frequent subjects of appeal. On the offence of polygamy itself, or on the punishment of it as such, much

Consequences as affecting settlements.

observation would be misplaced here; our immediate concern being with its consequences as they affect settlements. It is enough therefore to say, that the statute which ordains the punishment,† describes it to be "any person within his Majesty's dominions of England and Wales, marrying any person the former husband or wife being alive."

Construction of certain words in the act.

To the word "within," this construction has been given, viz. that if the first marriage were beyond sea, and the latter in England, the latter is the offence, and the illegal marriage for which the party may be indicted here, and of course such marriage conveys no settlement; but if the second marriage be abroad, although no such second marriage can convey any settlement, it is no offence punishable here.‡

On the expression which denotes the offence itself, "*the marriage*," it is to be observed that, in the trying it as a crime, the first and true wife cannot be admitted a witness against the husband (nor *vice versa*) but the second wife, being in truth no wife at all, may be admitted. §

Evidence of the crime.

But on the removal of a woman to her supposed husband's settlement, the illegality of the marriage may be proved by either the man himself, or by his real wife; for, said the court upon one occasion, "the woman was clearly

* Burr. S. C. 508.

† 1 Jac. 1. c. 11.

‡ Kel. R. 79.

§ 1 Hale, 693.

an admissible witness, though she could not have been so in any case where her husband was a party; because the husband and wife are, in law, one person. But here the *husband himself*, if he had been alive, might have been a witness; and wherever the husband may be witness, the wife may." *

But the fact of marriage cannot be inquired into after an order of removal, stating the parties to be husband and wife, if such an order be not appealed against; for the time being past for taking advantage in regular course, even though the fact were not then discovered, the parties who are damnified must abide by the consequences, for they are estopped after. †

On the last words of the paragraph, "*the former husband, or wife, being alive*," it is enough to observe, that three exceptions are made by subsequent clauses of the statute, which are, "where one of the parties shall continue beyond the seas for seven years together; or, being within the kingdom for seven years together, shall be so secreted, that one party shall not know whether the other is alive; and thirdly, to persons whose former marriage is void *ab initio*, or rendered so by sentence of a court of competent jurisdiction." These exceptions however, apply only to the trial of polygamy *as a crime*: Their consequences, as affecting settlements, present views of the subject somewhat different, but which have been already sufficiently considered, in what has been advanced respecting *non-access* in questions of bastardy, and under title, "*Evidence*."

The last point, under this division, necessary to be noticed, is one which was long controverted, and agitated in many cases, ‡ but which is at length settled, viz. whether the settlement of a woman marrying a man, whose settlement is not known, be suspended during coverture, and revive after his decease; or whether it continue during coverture; and also as to the mode of proceeding upon an appeal under these circumstances.

When the enquiry estopped.

Women's settlement not suspended during coverture.

* 2 Bott. Cons't. Edit. 81.

† Burr. S. C. 551.

‡ Burr. S. C. 367.—Cald. Ca. 39, 371.—2 Bott. 86.

One case, out of many, was the following, which exhibits the best illustration of the point :

A widow and her four children were removed from the parish of Woodsford to the parish of Winborne Minster. The session, on appeal, adjudged the settlement to be at Woodsford, and quashed the order, stating, that by a rule of the Dorsetshire sessions, upon all appeals the appellants are to begin, and in the first place shew some settlement of the pauper out of the parish appealing. That in pursuance of the said rule, the appellants produced a copy of the register of the birth of Mary Scutt in Asspuddle ; and the pauper Mary Pitman, swore that Mary Scutt was her maiden name. The counsel on the part of the respondents objected, that this was not sufficient ; but that the birth of the pauper's husband, or some other settlement of his, ought to have been shewn ; and farther, that to identify the said Mary Scutt, it was necessary for the appellants to prove the marriage of the said Mary Scutt with the said Robert Pitman. The session adjudged, that the proof of the birth of Mary Scutt was sufficient ; and that the *onus probandi* of the marriage lay upon the respondents in order to prove their case ; and quashed the order of removal. It was moved to quash the order of session, upon the ground that, the pauper having been removed in the character of a widow, it imported, that it was a removal to the place of her late husband's settlement ; that, unappealed from, it would be conclusive evidence of his settlement ; and that as this must consequently have been the only point meant to have been brought in issue between the parties, the maiden settlement of the woman was nothing to the purpose, and did not apply to the question before the court. But by the court. " It may be, the husband had no settlement ; and if he had, *till discovered, her own would in the mean time remain. It is enough in the first instance.* The sessions have done right. Motion denied." *

In a later case it was decided, that an order of justices for removing the wife and children of a pauper to the place

* Cal. Ca. 236.

of their settlement, is supported *prima facie*, by shewing that the place to which the removal was made, was the place of settlement of the wife before marriage; and although it also appeared by a copy of the marriage register, that the husband was therein described of *another parish*, such description was held to be no *evidence* of his having a settlement there.*

The next head of acquired settlement is RENTING A TENEMENT. Renting a tenement.

By the statute of 9 & 10 W. 3. c. 30., before introduced as creating exceptions to the previous one of Car. 2., one of those exceptions is, "the *bond fide* taking a lease of a *tenement of the value* of ten pounds." This communicates a settlement, even to the avoiding a certificate.

Four questions may occur upon the words of this statute, in deciding appeals.

1. What shall be construed a "*tenement*?"
 2. What shall be a "*bond fide* taking?"
 3. What shall be considered "*a lease*?"
 4. What shall be the interpretation of the words "*of the value*?"
- Construction of the statute.

It has been determined by numerous cases, too numerous indeed to be cited here, that *tenement* is a term of such comprehensive meaning, that it may extend to hereditaments incorporeal, as well as corporeal, and *generally* therefore, that any thing permanently attached to, or necessarily and immediately arising out of, land, may be considered is a *tenement*.† Thus the term, as applied by the constructions which have been put upon the act, covers *rabbit warrens*, even though the tenant have no direct interest in the soil, because, as was said in one case, "it was a pernancy of the profits of the land by the mouths of the rabbits."‡

A *dairy of cows* upon the same principle.§ Dairy of cows.
A *fishery*; for trespass will lie for it, and it may be recovered in ejectment, therefore it must be a tenement. || Fishery.

* 13 E. R. 311.

† See Pract. Expos. title, POOR, sub. 5.

‡ 3 T. R. 772.

§ R. v. Darley Abbey, 14 E. R. 284.

|| 2 Bott. 97.

One case, out of many, was the following the best illustration of the point :

A widow and her four children were removed from the parish of Woodsford to the parish of Woodsford. The session, on appeal, adjudged that the children were removed out of the parish of Woodsford, and quashed the order of the Dorsetshire session. The children are to begin, and in the meantime the pauper out of the parish of the said register of the parish of the pauper Mary, maiden name, is objected, that

the pauper, being, too, where it was not part of a turn-out, and on that account prohibited from conferring the settlement by 13 Geo. 3. c. 84.) collected by authority of parliament, which even declared the said toll to be personal property in the company of proprietors, were held to confer a settlement, being a tenement in the hands of the person to whom demised. ||

Tolls however were, in a subsequent case, said to be things which do not lie in tenure, but only in grant, and therefore if demised by a corporation, it must be made under the corporation seal, or they will not confer a settlement. **

A bond fide taking.

Assuming that there is a *taking*, according to the legal acceptance of that word, a *bond fide* taking, is a description that admits of little controversy, and therefore scarcely of any illustration : fraud vitiates all agreements, and therefore any fraudulent contract to give the semblance of a fair transaction, and thereby to confer a settlement, is so obviously *not* a *bond fide* taking, that comment, and authority, are equally unnecessary.

* 7 T. R. 671.

† 2 Bott. 93.

‡ 4 T. R. 348.

§ R. v. Dodderhill, 8 E. R. 449. || R. v. Bubwith, 1 M. & S. 515.

** R. v. Duffield, 3 M. & S. 247. On this subject, now, see 54 Geo. 3. c. 170. by which all toll-houses are excluded from conferring settlements.

appeals

and facts, by showing made, was the

'll be considered a *taking*, and secondly a taking *et manendi*, (without which the mere act of nothing) has been the subject of much continuous appeals. A few very recent determinations of views of the subject will be suffi-

labourer by the Board of Ord-^{The contract}
occupied a house of the rent of ^{itself.}

was then purchased by the
in part of the premises at a
which were deducted out of his
on last occupation he also occupied a
and house together being at the value of ten
upon dismissal from his employment, he gave
house as required. The court held, that this last
occupation of the house was not a taking, and residing as a
tenant, but merely as a servant, and therefore that no
settlement was conferred by it.*

A person engaged himself generally as waiter at an hotel in Leeds, where he had the tap, or privilege of selling malt liquors, and for the purpose of so doing, had the use of a cellar belonging to the hotel, which had a separate entrance, and of which he kept the key. The annual value of the cellar was six pounds, and, with the profits of his place as waiter, sixtypounds. It was contended in favour of a settlement, from these circumstances, that the engagement of service ought to be presumed a hiring for a year, and that under that engagement he rented the cellar; but the court of B. R. observing that the session not having drawn the conclusion of a yearly hiring, that point fell to the ground; and, as to the other, there did not appear *any taking* of the cellar as a tenant, but the occupation of it appeared to be merely a privilege annexed to *the place of waiter*.†

These cases are sufficient to establish the true criterion of ^{Intention of}
tenancy or a taking. We proceed now to the consideration of ^{residence}
^{under it.}

* R. v. Cheshunt, 1 Barn. and Ald. 473.

† R. v. Seacroft, 2 M. & S. 473.

the *animus morandi et manendi*, in the contemplation of the statute before mentioned. On this subject there have been so many very modern determinations, that it is unnecessary to cite any of anterior date.

A pauper agreed to commence tenant of certain premises at a future day, when the present tenant's term would have expired. The actual tenant gave him leave to put certain instruments of trade into part of the premises, which had an outer door, immediately, and delivered to him the key thereof a few days after. Seven days before the expiration of the old tenancy, the pauper went into the house, with consent of the tenant, but without the knowledge of the landlord, immediately after which, and before the regular period for his tenancy to commence, his wife was taken ill, and he received relief on her account from another parish: long before pauper had resided forty days in the premises, he and his family were removed to the relieving parish: so that it was clear he had never paid rent, he had not resided forty days, nor did he remain with the landlord's consent. On which concurrence of circumstances Lord Ellenborough, C.J. observed, that, "till the expiration of the former occupier's tenancy, the landlord could neither put out the old tenant, nor put in a new one, and therefore there was no such *occupation* as can give a settlement." *

The wife of a deserter, without her husband's knowledge, and without acknowledging that she had a husband, took a tenement, in her own name, of the value of ten pounds per annum. Some time after, her husband, who was a deserter, came to her to *conceal himself*, and resided in concealment more than forty days. It was contended, that the husband residing there was an adoption of the wife's contract, and that he gained thereby a settlement. But the court said, that "the *animus morandi et manendi* was wanting; for it would be a perversion of terms to say that a man who came purposely for concealment, came to the house in the capacity of a tenant with a design to settle.† That every circum-

* R. v. St. Michael, Coventry, 15 E. R. 567.

† R. v. Ashton-under-Lyne, 4 M. & S. 357.

stance in the case negatived the position of his adopting the contract of the wife, and that he did not acquire a settlement."

But where a soldier, his regiment being in barracks in the place, took a house of the value of ten pounds per annum, for himself and family, and resided therein more than forty days, though always liable to be called away on duty, it was determined to be a taking, and a *coming to settle*, sufficient to satisfy the words of the statute, and that such residence gained a settlement.*

Although the contract may be *bond fide*, and residence without dispute, yet the whole transaction may be so circumstanced, as not to satisfy the *spirit* of the law; as where the pauper E. R. had gained no settlement for herself, but her father J. W. was settled at K. In 1814, he rented a dwelling-house, cow-house, and pasturage at B. of the value of four pounds, and resided upon it that year. On the 11th of August, in the same year, he bought at a public auction four lots of oats growing in a field at C. for the sum, and at the value, of twelve pounds fourteen shillings. He began to reap them on the 14th of September, finished, and carted away the last load on the 3d of November in that year. The question was, Whether these transactions gave J. W. a settlement at B.?

The words of the acts not satisfied, the contract *bond fide* and residence sufficient.

It was contended in favour of the settlement, that the purchase of the oats passed an interest in the land, and therefore it constituted a tenement. Lord Ellenborough, C. J. observed, that "the word *renting* was not indeed in the stat. of Car. 2., but what is found in the subsequent stat. of Wm. 3. shews how the former statute was understood, and that *coming to settle* in the former was equivalent to *renting a tenement* in the latter. This case was that of a purchase, and not that of a renting, and therefore could *in that way* confer no settlement," &c. Le Blanc, J. added, "that a party to acquire a settlement by renting, must reside forty days while he holds a tenement of the annual value of ten pounds. Now, even supposing this to be the case of a *renting* of a

* R. v. Brighthelmstone, 1 Barn. and Ald. 270.

tenement, yet his interest in the crop of oats was continually diminishing in value *de die in diem*, and how does it appear, therefore, that he resided forty days, *while he continued* to hold a tenement of the value of ten pounds? Order quashed.*

The words of the statute sometimes satisfied, though spirit *contra*.

A contract, on the other hand, may sometimes be legally considered as a *bond fide* transaction, which satisfies the words of a statute, though not in strict compliance with the spirit which dictated it.

As where the pauper hired a house and land at D. at the yearly rent of *nine pounds*; which he occupied and paid rent for during several years, from *Lady-day* to *Lady-day*. In the beginning of *September*, he married a widow of the parish of W. who resided in a cottage purchased by her former husband, and which might be of the value of *one pound ten shillings per annum*; and about a fortnight after his marriage, he went and resided with his wife in the said cottage in W. aforesaid; and kept the key of the house in D. till *Lady-day* following. His wife had never administered to her first husband, nor been admitted tenant to the said premises, nor ever paid any rent for the same. The justices were of opinion, that the pauper could gain no benefit by the wrongful possession of the cottage; he appearing to be only a casual occupant therein; and therefore adjudged it no settlement.

But the court of B. R. were of a contrary opinion; they considered the words of the statute as fully complied with, and a rule having been obtained to shew cause why the order should not be quashed, the same was afterwards made absolute, without defence.†

A lease.

A lease has been understood, under this statute, to mean nothing more than a contract, and even that the law will imply, under some circumstances, as was laid down by Ashurst, J. in one case, in the following words:

“In order to acquire a settlement by taking a tenement of ten pounds a year, it is not absolutely necessary that there should be an express contract for the tenement; it is sufficient if the tenant reside forty days on a tenement of such

* R. v. Bowness, 4 M. & S. 210.

† Burr. S. C. 744.

value with the permission and consent of the landlord: for in such case the law implies a taking or contract.”*

So also the occupation of a cottage for forty days, by the leave of an outgoing tenant, under an agreement with him to pay the landlord the same rent; which he, the outgoing tenant, had before done, but without any authority from the landlord, the cottage together with other premises occupied at the same time being ten pounds a year and upwards, hath been holden sufficient to give the occupier a settlement; nothing appearing to shew that the former tenant's term had expired, and the law giving him authority to assign his interest.†

Of the value of ten pounds. It has been repeatedly determined, that the value, and not the rent, is the true criterion, according to the words of the statute; and therefore if the rent be only five pounds, yet the value may be ten pounds, or twenty pounds, or other greater sum, and will consequently confer a settlement. Yet in ordinary cases, it has been almost as frequently observed by the court of B. R. that the rent is a good medium through which to ascertain the value. Value of ten pounds.

Therefore, where the pauper hired a house at Brighton by the week, paying four shillings a week for the same, which he continued to sleep in, with his wife and family, for three months, and which house was at all times of the year of the value of four shillings a week, if taken by the week, but was found not to be of the value of ten pound *per annum* if taken by the year—The court held, that the pauper, by reason of renting such house under these circumstances, did not gain a settlement by virtue of stat. 13 and 14 Car. 2; c. 12; for though, under this statute, it is not necessary that the tenement should be let by the year, but it may be let by the week; or day; yet those lettings are *media* for ascertaining the yearly value, and in this case it was expressly found that the tenement was not of the value of ten pounds *to be taken by the year*.‡ Innumerable cases to the same effect have been similarly decided.

* 4 T. R. 258.

† 1 E. R. 597.

‡ R. v. Wellingly, 10 E. R. 41.

But, if there be no circumstances in the case, which import the value to be less than the rent, the rent shall be evidence of the value.*

But the value of the tenement may be calculated without deducting taxes, rates, and charges, usually denominated tenant's taxes.†

The value, however, must be with reference to the tenement at the time of taking, not to any thing to be done to it after entry, in order to increase the value. Thus, a piece of land not in itself worth ten pounds per annum, was made so for planting potatoes by the labour bestowed upon it at the landlord's expence *previous to the contract*, and held, *on that account*, a tenement of the value of ten pounds, to be let by the year.‡

The same effect followed when the agreement was to take a piece of land by the year, not then of the value of ten pounds, but on condition that it should be made so *before the time of entry*, which was done, and at the time of entering it was worth the ten pounds per annum. Held, that the value bore reference to the period when the person began to be in the capacity of occupant.§

Several occupiers jointly.

If a tenement be occupied by several persons as partners, and each of them have an interest in it to the value of ten pounds a year, although it be rented in the name of one of them only, they will all gain a settlement by residing thereon forty days.||

Part underlet.

But the party need not occupy the whole tenement himself, but he may under-let the same, or any part thereof to another, if he think proper, and this will not prevent his gaining a settlement.**

Forcibly prevented.

If a person residing on a tenement of ten pounds a year be *forcibly prevented* from residing thereon for forty days, the court will not decide that he gained a settlement in the parish, unless the order of sessions state, in express terms, that it was done with the fraudulent intent of preventing his gaining such settlement; for the court cannot infer fraud; it must be expressly stated.††

* 2 Str. 1156.

† R. v. St. Paul, Deptford, 13 E. R. 320.

‡ R. v. Ringwood, 1 M. & S. 381. § R. v. Cramore, 2 M. & S. 135.

|| 6 T. R. 554.

** Burr. S. C. 571.

†† 7 T. R. 105.

Thus, where a pauper took a tenement of ten pounds *per annum* in a parish, and after living in it with his family for five days, was arrested and sent to prison in another parish, his wife and children continuing to live in the first mentioned parish for seven weeks longer, it was held, that no settlement was gained in the first parish, either by the husband, or wife.* Now, by a recent statute it is enacted † that no person shall be deemed to have gained a settlement by reason of *any* residence, while he, or she, shall be detained as a prisoner by any civil process, or for any contempt whatever; and by the same statute it is provided, that no person shall gain a settlement by reason of any residence provided by a charitable institution, while such person is supported by the same.

But in order to gain a settlement by forty days' residence on a tenement of the yearly value of ten pounds, the party must stand in the relation of a tenant to the premises for the whole time under one title; for, as was observed by Lord Kenyon, C. J. in one case, "If a mere residence for forty days irremovable were sufficient to give a settlement, every lodger, and every servant, residing for that length of time would then acquire a settlement;—but in order to gain a settlement by residing on a tenement of the yearly value of ten pounds, the party must stand in the relation of tenant to the property for forty days."‡

The law, however, on the mode of acquiring settlements, has undergone an important alteration very recently, by a statute,§ which enacts, that after the second day of July, 1819, no person shall acquire a settlement in any parish, or township, maintaining its own poor in *England*, by or by reason of his, or her, dwelling for forty days in any tenement rented by such person, unless such tenement shall consist of a house or building within such parish, or township, being a separate and distinct dwelling-house or building, or of land within such parish, or township, or of both, *boni fide* hired by such person at, and for, the sum of ten pounds

Must be relation of landlord and tenant.

Settlement shall not be acquired by renting any tenement, except a house or land in the parish of the actual annual value of 10*l.* hired and rented for a year.

* 7 T. R. 466.

† R. v. Lynn, 5 T. R. 664.

‡ 54 Geo. 3. 170.

§ 59 Geo. 3. c. 50.

a year at the least, for the term of one whole year; nor unless such *house or building* shall be held, and such land occupied, and the rent for the same actually paid, for the term of one whole year at the least, by the person hiring the same; nor unless the whole of such land shall be situate within the *same parish or township as the house wherein the person hiring such land shall dwell and inhabit*; any thing in any act or acts, or any construction of, or implication from, any act or acts, or any usage or custom to the contrary in anywise notwithstanding.

Annual office. The next exception in the statute of 9 & 10 Will. so often referred to, is, "*or unless he shall execute some ANNUAL OFFICE, in such parish, being legally placed therein;*" which, it is declared by this statute, shall even avoid a certificate; and by a previous statute of the same reign* had been declared to give a settlement, if executed for *one whole year*, and on the party's *own account*.

First, It must be an *annual office*.

Secondly, It must be *in the parish* wherein the party has come to reside.

Thirdly, He must have been legally placed in such office.

The offices
within the sta-
tute.

The offices which have received the construction of *annual offices* within the statute, by different determinations of the court of B. R., are as follow:†

Constable, serving by himself or deputy; parish clerk; sexton; tithing man; borough warden; superintending constable of a city consisting of several parishes; hog-ringer to a parish, receiving his appointment from the parish at large, and not from individuals; ale-taster of a borough, being an annual appointment; collector of the land-tax; all which are of the description of *offices* designated by the statute, in their nature *public offices*, recognized by, and for the benefit of, the *whole parish*, and the holders *annually* appointed to serve for the year.‡

In conformity with the decisions in the cases of offices

* 3 Wm. c. 11.

† See Pract. Expos. *title*, POOR, sub. 7.

‡ R. v. Whittlesea, 4 T. R. 807.—R. v. Wantage, 2 E. R. 65. and R. v. Hammond, 2 Bott. 167.

here referred to, and to the line of discrimination taken in a subsequent case by Lord Ellenborough,* the office of mace-bearer to the mayor of an ancient corporation, being an annual office, derived (mediately at least) from the crown, of great antiquity, and of public notoriety, was decided at the Middlesex Midsummer Sessions, 1819, to be that description of office which conferred a settlement.†

On the other hand certain offices have been determined *not* to be within the statute; for example those of curate, which, though an office sufficiently public, was not one in contemplation of the statute, which only looks to *inferior* offices; governor of a work-house, because he is to be considered, rather as a *servant*, than an *officer*; “office” meaning office derived from the crown, or created by statute: ‡ *deputy constable*, for he is merely the servant of another, which other acquires a settlement by the service of the deputy; schoolmaster, who was merely the servant of the vicar, and not, in any of the senses of the expression, a *public officer*; lastly, all officers whose appointment is for less than a year, or upon an uncertainty of duration for that time.§

Offices not within the statute.

The term.

The construction put upon the statute, as it respects the *other two* points, will be easily collected from the two following cases, which set the subject in a clearer light, than any positions, by way of inference from them, could do.

A certificate-man from St. Thomas's came into the parish of St. Mary Calendar in Winchester. He was afterwards chosen one of the constables for the city of Winchester, which city consists of several other parishes, besides that of St. Mary Calendar; and was *legally placed in that office*, and executed it, in, and through, all parts of the city, for one whole year, during which time he resided in the parish of St. Mary Calendar.—By the court unanimously. He

Construction of office in the parish.

* R. v. Mersham, 7 E. R. 170.

† It may be considered unusual to cite the decisions of one court of quarter session, as authority for those of others; but they must be unreasonably fastidious, who know how the chair of that court is now filled, and will not look to its determinations with respect.

‡ 7 E. R. 167.

§ 8 T. R. 445.

avoided his certificate, and consequently gained a settlement in St. Mary Calendar, by executing this office in that parish; though chosen by the whole city, and not by the parish of St. Mary, singly; and though not a mere parish office: for, in the words of the act, "*he executed an annual office in the parish,*" being legally placed therein.*

Construction of
legally placed.

But in the *K. v. Winterbourne*, *Hil. 4 Geo. 3*, the custom was for the constable to be presented by the leet-jury; the jury presented Richard Bayley, Esq. who procured the pauper to serve for him, in order to gain the pauper a settlement; the pauper was accordingly sworn into the office, before a justice of peace, and served the same for the whole year; "but he was not presented thereto at any court-leet, as a constable in his own right," according to the custom.—By the court. "The case expressly states, that he never was presented to the office at any court-leet, as constable in his own right; and that the custom requires all constables to serve for the said tything to be so presented. Therefore he gained no settlement, because he was not legally placed therein."†

By estates.

The occupancy of AN ESTATE is the next medium through which a settlement can be acquired. However voluminous the determined cases on this head of settlement may be, (and that they are so is apparent enough‡ in the books which record them,) they chiefly, if not altogether, arise out of two points of construction of a short section, in a statute of recent date;§ respecting the purchase of "any estate, or interest," and on the operation of the anterior statute of Car. 2, already so frequently referred to, on the occupation of such estates, or interests, when devolving upon the occupants by operation of law.

It is enacted by the first-mentioned of these statutes,|| that "No person shall be deemed to acquire any settlement in any parish or place, by virtue of any purchase of any estate or interest in such parish or place, whereof the consideration for such purchase doth not amount to the sum of 50*l*."

* Burr. S. C. 27.

† Id. 520.

‡ See 2 Pract. Expos. 526.

§ 9 Geo. 1. c. 7.

|| 9 Geo. 1. c. 7.

bonâ fide paid, for any longer time than such person shall inhabit in such estate; and shall then be liable to be removed to such parish, or place, where such person was last legally settled before the said purchase and inhabitancy therein."

Before we proceed to an explanation of these words, it is necessary to premise, with reference to the previous statute of Car. 2, *that a person may not be removed from his own estate*, even though it be not of such a description, or so obtained, as of itself originally to confer a settlement; and that by residence thereon for forty days, under such certain circumstances, as do not absolutely *prohibit* his acquiring one, he may obtain a settlement. Two cases, even under unfavourable circumstances for the support of this general position, are sufficient to explain and illustrate it. The pauper's husband was settled at White Rooding, from which place he went away, and deserted his wife and children.—The wife left White Rooding, and went, with her children, and "lived forty days without her husband, in a copyhold tenement of her husband's own, at Aythorp Rooding." She was removed from thence to the parish of White Rooding. The court were unanimously of opinion, that "although the wife *could not gain a settlement* for her husband by residing forty days upon his own estate, yet that she was *irremoveable from the property* of her husband; for she had a natural, or at least a matrimonial, right, to go to her husband's estate; and as there did not appear to be any dissent of her husband, it was rather to be presumed, that he consented."*

Paupers not
removeable
from their own.

A pauper resided several years on a leasehold estate granted to him for three lives, in consideration of two guineas fine, and one shilling rent. He became actually chargeable, and the question was, whether, under this extreme circumstance, he could be removed to the place of his settlement. The court of B. R. said "it was one thing to say, that a person may not be removed, but another to say, that he gains a settlement. That the pauper could not be removed from his own, but that being a purchaser

* Burr. S. C. 412.

under 30*l.* and the estate not coming upon him by operation of law, he gained no settlement by forty days' residence on it." *

Possession by
operation of
law.

What shall be understood to be possession by "operation of law," sufficient to enable a person to acquire a settlement by forty days' residence, on his own estate, may be collected from the following. One case was, that, thirty years since, the father of a pauper built a cottage upon the waste in a place called Wyley, belonging to the Earl of Pembroke, and lived on it till his death, about three years since, when it descended to his daughter Elizabeth, then married to John Darby; that they entered and enjoyed it three quarters of a year, and then sold the possession of it to John Wyvel, who has enjoyed it ever since, without any molestation from the lord; but no original grant appears: and whether John Darby and his family are settled in Wyley, where they lived three quarters of a year in the cottage in right of his wife, or in Ashbrittle which was the place of his last settlement before the marriage? was the question; and by the order of two justices, and the order of sessions, it is adjudged to be a settlement in Wyley.—By the court. "The order must be confirmed; he lived forty days in the capacity of a person irremovable, and that is a settlement of itself. Here has been an enjoyment for thirty years, during all which time the lord never claimed any thing. The least that can be made of it, is a title by disseisin, and a descent is cast. This man had undoubtedly a title against all the world but the lord, and even against him it may be doubtful, after so long a possession. In ejectment, he might either make, or defend, a title by twenty years' possession: Therefore in this case there is no colour to determine against his right, when the lord does not think fit to impeach it; though, if he did, it would never be allowed to determine the title upon an order of removal, but upon an ejectment only."†

In conformity with this determination, have been a great number of others up to the present time, all founded on the

* 5 E. R. 40.

† 2 Str. 608.

same reasoning, and involving nearly the same questions. Indeed such has been the disposition of the courts to facilitate the means of acquiring settlements, that considerable latitude in the interpretation of the statutes, has, in every point of view, been introduced. Thus, respecting settlements obtained by residence on estates, from which the parties residing were for a given time irremovable, widows, widowers, children, executors, administrators, and persons of nearly all descriptions having indefeasible, *equitable* interests in estates, and residing under certain circumstances, have been decided to acquire settlements by a long series of determinations.

A person residing on an estate by virtue of marriage, By marriage. will thereby gain a settlement; so, though the premises be vested in trustees for the separate use of the wife, the husband, by residing on the estate for forty days, will be legally settled; for, said the court, it would be refining too far to say, that an equitable estate will not confer a settlement, as well as a legal one.*

On similar principles it has been decided, that the widow Right of dower. of a man, who dies seized of a house, residing in it forty days in right of her dowry; and children residing for the same period, on an estate devised to trustees to be sold for their benefit, before such sale; will gain settlements.†

And where a person bequeathed by will an estate, originally purchased for less than 30*l.*, to trustees to let for his daughter's life and pay her the rent, and after her decease to his right heirs; the trustees suffered the pauper to reside on the premises more than forty days after the decease of her father, and the court of B. R. determined, that by so doing she gained a settlement, for she did not reside as a tenant, and whether her title were a legal, or only an equitable one, was the same thing as to gaining a settlement by residence on it.‡

But no person, who is entitled as an executor or administrator, Executor or administrator. can gain any settlement by a residence on the

* 3 T. R. 114.

† Cald. Ca. 474.—Burr. S. C. 793.

‡ 16 E. R. 127.

estate, before he has obtained a probate or letters of administration.*

Except, indeed, such executor or administrator be *sole next of kin*; and then, it has been holden that such a case forms an exception.†

Twenty years' quiet possession.

And after twenty years' quiet possession, the party shall be deemed to have gained a settlement, though no administration was ever in fact taken out.‡

Gift without regular conveyance.

Upon the same principle, if a person reside on an estate *given* to him by a relative, for a long series of years, without interruption, he will thereby gain a settlement, though no formal conveyance may have actually been executed; but this is only on the ground of long possession throwing some sort of obscurity over the original transaction, and therefore affording a ground for *presuming* a legal commencement.§

For, in another case, where a voluntary conveyance of a trifling estate had been of *short* standing, from a father to his son, the son was held not to have gained a settlement on it by forty days' residence, "because," said the court of B. R. "every estate not acquired by *descent*, is in law a *purchase*, and the party cannot hope to be in a better condition, because he pays no money for the land." ¶

Accession without residence.

Accession, indeed, to an estate, without a residence of forty days will not gain a settlement.**

But the forty days' residence need not of necessity be successively.††

If an estate *descend* to a pauper, and he reside in the same parish forty days afterward, although he may, immediately after the descent to him, have contracted to sell the estate to another, yet if the conveyance be not executed till after the forty days of residence be expired, he will gain a settlement.‡‡

The following very recent determinations appear to have carried the principle, on which the foregoing ones were

* Burr. S. C. 109. † 8 E. R. 405. ‡ Burr. S. C. 444.

§ 6 T. R. 554. ¶ Burr. S. C. 56. 386. 560.—Cald. C. 416.

** 1 Str. 476. †† Burr. S. C. 125. ‡‡ 1 E. R. 206.

founded, to the utmost latitude of which the subject is susceptible, while, at the same time, the limits, within which it must be restricted, have been very clearly ascertained.

A person attainted, but discharged under the sign manual, (but no actual pardon appearing) purchased a copyhold estate of the prescribed value, was admitted, and lived upon it more than forty days, viz. some years. The court of B. R. was of opinion that, whether the crown could have impeached his title, or not, having lived upon the estate unimpeached forty days, he obtained a settlement, and communicated it to a child.*

Person attainted residing forty days on a copyhold unimpeached.

Pauper J. A. previously settled in Aicton, went to reside with her father D. A. on an estate which he had purchased for less than 30*l.* and continued to reside with him till his death. D. A. by will devised this estate to a trustee "in trust to let the same during his daughter's life, and to pay her the rent; and after her death to the use of his right heirs." The pauper J. A. continued to reside upon the premises more than forty days, the trustee *not having interfered to prevent it*. This was determined to confer a settlement, Lord Ellenborough observing, that "this species of settlement did not depend on any positive enactment of statute, but on an excepted case, standing upon the rule that no person shall be removeable from their own. In this case the pauper did not reside in the capacity of a tenant, but under a claim of title, which, whether legal or equitable, conferred a settlement."†

Justice permitting cestui que trust to reside.

The widow of a person dying intestate, in a manor where *there is no custom for appointing guardians*, nor any instance on the court rolls of *assignment of dower*, but where by the custom all copyhold lands descend to the youngest son, continued to reside with her family of children, sons and daughters, infants, on the copyhold estate. The question was, under the circumstances of the custom of this manor above stated, whether she and her children, except the youngest son, were removeable from this copyhold estate. The court of quarter session had ordered them to be removed;

Widow of intestate copyholder residing with her infant son entitled to the estate, irremoveable.

* R. v. Haddenham, 15 E. R. 468.

† R. v. Holm, 16 E. R. 127.

but the court of B. R. after deliberation, decided, that the mother was the guardian *by law* of the infant's copyhold, and as such, irremovable therefrom, and quashed the order.*

Much to be inferred respecting an original title, accompanied by long possession.

The grandfather of a pauper had given to his father (but it did not appear in what manner,) thirty years ago, a piece of land, on which he built a house, and lived in it several years with his family, of which the pauper was one, and then removed into a third parish with his said family, lived there some years, and let to a tenant the afore said house which he had built. Ten years ago he returned to his said house, and has resided in it ever since, never having paid any rent or acknowledgment for it. The pauper was part of his father's family at the time the house was built, and continued so for fifteen years afterward, when he married, left his father's family, and never returned. From this succession of occurrences it appears that the pauper was emancipated before his father had obtained a perfect title from a possession of the house in question for twenty years; and it was therefore contended, that here was a mere naked possession, but no title; that, till the period of twenty years, he was not irremovable from it, and had not got a settlement by his residence on it; so thought the justices in session. But the court of B. R. said, "he was in for fifteen years under some title or other, and has continued in possession for fifteen years more, and up to the present time; therefore, it must be *inferred* that the father had a title at the former period, by the gift of his grandfather." †

Possession and residence undisturbed for more than forty days under a claim of title, without fraud or consciousness of wrong.

So, where one J. F. being seized in fee of a cottage, demised the same to the overseers of the poor of the parish, (for the *legal* consideration of 5s. and the *moral* one of having received great assistance from them,) for one thousand years, receiving a pepper corn rent, and, with some intervals of absence, continued to reside in it till his death. A short time before his death, with the consent of the overseers, his daughter came to take care of him, (he having become very ill and infirm) and resided with him till his

* R. v. Wilby, 2 M. & S. 504.

† R. v. Calow, 3 M. & S. 22.

death, and continued there afterwards, and in about six weeks was found there by her husband, who laid claim to the cottage in the right of his wife, who was heir at law of the pauper deceased. The overseers having mislaid the deed of consequence to them, took no steps to dispossess the paupers till it was found some years after. The case was argued at length, and the court took time to consider it; but the single question, on which the order of session was ultimately quashed, was the residence of more than forty days on the premises *under a claim of some title, and without fraud*. Bailey, J. in delivering the opinion of the court, said "for any thing that appears to the contrary, the husband of the pauper believed he had some right in the premises, and the parish officers, who alone could gainsay that right, took no steps to oppose his occupation, but acquiesced (from whatever cause matters not) for some years. This is no case of fraud, nor has any been found, and no measures having been taken by those who had the power, to displace him before the expiration of forty days' residence, we are of opinion that an undisturbed residence on property, which the pauper claimed as his right, without any consciousness of wrong, conferred a settlement."*

Notwithstanding the propensity in favor of settlements acquired by the possession of property, exemplified in this series of recent determinations, a limit is fixed by a very few modern cases, which restrict the claims to a *tenement*, according to the legal definition of that word.

A pauper was freeman by descent of a borough, to which belongs an extensive moor of great value, and the *freemen* have an exclusive right of pasturage thereon, with certain other privileges of cutting turf, &c. &c. *while resident*, but not otherwise. The single question was whether such rights, so limited to residents, are an estate from which a pauper freeman is irremoveable under the statute. The court of B. R. observed, that "the *estate*, as it is called, under consideration is neither *house* nor *land*, but a mere claim to a *right of common*. Such right is a *franchise*, not a *tene-*

No privilege merely personal, though it arise out of land or tenement, an estate conferring a settlement.

* R. v. Staplegrave, 2 Barn. & Ald. 527.

*ment; a personal privilege not alienable, and therefore not even coming within the strict legal definition of a right of common." **

Licence to erect a cottage on a waste, not followed by any more permanent title, a mere personal privilege.

A pauper being legally settled at H. applied to the lord of a neighbouring manor for a licence to erect a cottage on the waste of that manor. The licence was granted, and a cottage erected at an expence of more than 30*l.*, and the licence, with some subsequent alterations of the premises, entered on the court rolls. None of the entries were stamped, and there was no other evidence of title. No demise by copy of court roll, nor any custom proved to erect copyholds in this manor after the manner stated.

The court of quarter session thought this did not create a legal interest in the pauper, as a grant of a copyhold estate not resumeable by the lord.

It was contended, on the other side, that even considering this imperfect conveyance as a mere licence, it was a licence executed, and not countermandable; and therefore that the pauper, having *some interest in the land*, and having resided more than forty days, was irremovable, having gained a settlement. Lord Ellenborough said, "*a licence is not a grant. A licence may be recalled, and this might be, the very day after it was given. It was a mere personal licence. It amounts to a permission to occupy, nothing more.*" The order of session was confirmed.†

Bonâ fide consideration of 30*l.*

Having now gone through a sufficient number of cases for an ample illustration of the general doctrine of persons being irremovable from their own estates, as well as to show how far residence, coupled with possession by operation of law, goes, in conferring settlement, it is time to advert to the principal subject of consideration in the statute we are examining, viz. what is the interpretation by authority of the words "*whereof the consideration for such purchase doth not amount to the sum of 30*l.* bonâ fide paid.*"

The plain and obvious meaning of which words is, that, if an estate be granted for a pecuniary consideration, and

* R. v. Warkworth, 1 M. & S. 473.

† 4 M. & S. 562.

such consideration do not amount to 30*l.*, a residence thereon for forty days will not gain a settlement.

But it has been repeatedly decided, that though the party cannot pay the purchase money out of his own funds, yet if he can borrow it on credit, *that* is sufficient to satisfy the words of the statute; and therefore, although he mortgage the estate itself to raise the funds, so that the estate be but purchased for 30*l.* *paid bonâ fide to the vendor*, it will be sufficient.*

Pauper mortgaging the estate.

But the purchase of an estate *subject to a mortgage* is not sufficient for the purpose of gaining a settlement, unless the money actually paid for the equity of redemption amount to 30*l.*†

And if the original purchase be under 30*l.* no subsequent improvements will be sufficient for the purpose of gaining a settlement. ‡

Subsequent improvements not to be reckoned.

A pauper purchased a messuage for 52*l.* under an agreement that the vendors should allow 40*l.* of the purchase money to remain upon mortgage of the premises. The mortgage was made, and only 12*l.* paid by the pauper to the vendor, who kept the title deeds; but the pauper took possession, and resided some years on the premises. He afterwards sold them to a third person for 60*l.* who paid 40*l.* to the original vendor, and the remaining 20*l.* to the pauper, obtained the title deeds from the original vendor, and the execution of the pauper to the conveyance; after which period the pauper did not reside any longer on the premises, but delivered them up to the new purchaser. The court said, "the 40*l.* paid by the new purchaser was for his own benefit, not for that of the pauper, who had in fact never paid more than 12*l.*; never had any possession of the title deeds, and therefore had not made a purchase of any value, beyond the sum which was actually paid independent of the mortgage. That, in all the other cases of mortgagors which had been decided in their favour, if they had not actually paid the whole money from their

* Burr. S. 57.—6 Term R. 755.

† 2 Term R. 12.

‡ Burr. S. C. 552.

own resources, they had had at least credit to borrow it *aliunde*." *

The following case in T. 57 Geo. 3. is peculiarly illustrative of the principle laid down in the foregoing one, and decisive upon the subject. J. C. having acquired a settlement by hiring and service in S., made a parol agreement for the purchase of a copyhold house, and an acre of land, in E. for 150*l*. He paid the sum of 34*l*. on account of the purchase-money, the remainder being to continue as a loan. Pauper took possession of the house and land, and continued to reside as owner for six months. There was no agreement in writing, nor any surrender on the court rolls. A disagreement arose between the pauper and the vendor, and it was determined between them to rescind their former agreement, the pauper restoring the possession of the premises, and receiving back 14*l*., part of the 34*l*. paid, and the vendor to retain the other 20*l*. The question was, whether the residence on the property for six months, under the foregoing contract, gained a settlement?

It was strongly contended for the settlement, that J. C. had, at least, as good an equitable title, as he could have had by surrender, till actual admission; that the contract having been *in fact performed*, though parol, was good by the statute of frauds; and that the possession being actually transferred in conformity with it, it was a good equitable title, which no subsequent abandonment defeated the rights resulting from, while it continued.

The court of B. R. however admitted that an equitable title would be amply sufficient, supposing it to be a perfect title of that kind; but here there was no *complete* title of any kind. It was only an inchoate title, but no interest vested. "Equity," said one of the judges, "would consider the vendor as trustee for the purchaser, but he is not trustee till the purchase-money be paid, or at least tendered. This may be in common parlance "a purchase," but the statute requires that the purchase-money should be *bond fide* paid." †

* R. v. Olney, 1 M. & S. 387.

† R. v. Long Bennington, 3 Pract. Expos. App. 732.

But a single woman purchases a tenement, and afterwards marries, the husband gains a settlement by a residence on this estate, and communicates the same to his wife, although the original purchase-money was under thirty pounds; for the husband gained a settlement by forty days' residence upon his own estate, and his settlement communicates itself to the wife. *

Purchase for less than 30l. communicating a settlement by marriage.

And to gain a settlement, the residence need not be on the estate, for a residence, in any part of the parish in which it is situated, is sufficient. For according to Holt, C. J. "having land in a parish will not make a settlement, but *living in a parish where one has land* will gain a settlement:" for the act of parliament never meant to banish men from the enjoyment of their own lands. †

Residence on the estate itself not requisite.

CERTIFICATES are fallen much into disuse since a recent statute declared that, "henceforth no poor persons should be removed from their places of residence till they should become actually chargeable;" ‡ but as the power to grant certificates, with their effects and consequences, still remain as they stood under the former statutes, § by which they were introduced into the system of laws for the regulation of the poor, it is necessary to offer a few observations on such questions as are commonly brought before the sessions by Appeal.

Certificates.

The substance of the statutes recently referred to, is, that, "any poor person may go to inhabit in any other place than that in which he is settled, on *delivering* to the church-wardens and overseers of the poor of the parish where *he goes to inhabit*, a certificate under the hands and seals of the church-wardens and overseers, or *the major part* of them, or of the overseers where there are no church-wardens, attested by two credible witnesses, and allowed by two justices having jurisdiction, acknowledging the person or persons therein named to be legally settled in the parish granting such certificate. But at least *one* of the witnesses,

Substance of the certificate acts.

* Burr. S. C. 566. † 2 Salk. 524. ‡ 35 Geo. 3. c. 101.

§ 8 & 9 Will. c. 30.—9 & 10 Will. c. 11.—12 Ann. c. 18.—3 Geo. 3. c. 29.

who attest the certificate, must make oath before the justices allowing it, that he saw the church-wardens and overseers, whose names are subscribed as allowing it, actually sign and seal the same; and that the names of the witnesses are of their hand writing, and the justices shall certify that such oath was made before them, and such certificate so allowed shall be evidence in all courts whatever.

“And such certificate shall only be discharged by one of the modes already treated of.

“And no person so certificated, while the certificate shall continue operative, shall be able to communicate a settlement to any apprentice, or servant.”

Explanation of
their language.

On the specific expressions in the statute, it is sufficient to notice, that *delivery to the church-wardens, &c.* must be an *actual delivery at the time* the pauper goes to inhabit, for otherwise it would be opening a door to innumerable frauds; * and that the person wishing to take advantage of the certificate, must in fact *reside* under its authority, to satisfy the words “*come into any parish,*” which are those of the statute of 9 and 10 Will. and evidently mean, what is expressed in the other statutes on the same subject, by the words, “*come into, or, reside in,*” and *come to inhabit, or reside*; and lastly, that “*the major part of the church-wardens,*” &c. which was formerly a subject of frequent controversy, is now ascertained, by a recent statute, † to comprehend the case of “two persons only, acting, or purporting to act, in the capacity of church-wardens, *as well as overseers of the poor,*” the same as if distinct persons as church-wardens, and other distinct persons as overseers of the poor, had been parties to any certificate. And by another, of a subsequent session, ‡ it is further provided, on this very subject, “that all indentures for the binding of poor apprentices, and *all certificates of the settlements of poor persons,* which have been heretofore signed and executed, or which shall hereafter be signed and executed, by a person or persons, who at the time of his, or their,

* R. v. Wensley, 5 Term R. 154.—2 Bott. 439.

† 51 Geo. 3. c. 80.

‡ 54 Geo. 3. c. 107.

signing and executing such indenture, or certificate of settlement, acted as church-warden or church-wardens, chapel-warden or chapel-wardens, of the township, hamlet, or chapelry, binding such poor apprentice, or granting such certificate of settlement, shall be deemed and taken to be as good, valid, and effectual, as if the same had been signed and executed by a person or persons actually sworn into the office of church-warden or chapel-warden of such township, hamlet, or chapelry; provided always, that such person or persons shall have been duly sworn into the office of church-warden of the parish wherein the township, hamlet, or chapelry, binding such poor apprentice, or granting such certificate, be contained, or into the office of church-warden or chapel-warden of such township, hamlet, or chapelry; and that all indentures for the binding of poor apprentices, and all certificates of the settlements of poor persons, which shall have been heretofore signed and executed, or which may hereafter be signed and executed by the overseers of the poor of any township, hamlet, chapelry, or place, and the church-warden or church-wardens, chapel-warden or chapel-wardens, acting for, or appointed in respect of, such township, hamlet, chapelry, or place, or the major part of them, shall be deemed and taken to be as good, valid, and effectual, as if the said indentures and certificates had been signed and executed by such overseers and church-wardens of the parish wherein such township, hamlet, chapelry, or place is situate, or the major part of them. Provided always, that nothing herein contained shall be construed to alter, impeach, or affect, the settlement of any person, for whose removal any order of justices shall have been duly made *before* the passing of this act."

Assuming, then, that the certificate is regular in point of form, and that all the steps necessary to carry it into effect have been complied with, it remains to be seen what are its consequences in ordinary cases, and how it is discharged.

And first, of the immediate operation and consequences of granting a certificate.

Persons not married.

A certificate given to two persons as man and wife, though they afterwards turn out not to have been legally married, is good, if there were no fraud intended, and the parties ignorant of the irregularity; facts to be ascertained from circumstances, and found by the justices.*

To whom it is conclusive.

A certificate is conclusive between the parish certifying, and the parish to which the certificate is granted; but as between the certifying parish, and any third parish, all matters remain open to investigation and controversy; the certificate only operates to the security of the particular parish to which it is certified; and the certificate person is not excluded by it from acquiring a settlement in *another* parish, in the same manner that any other person might do. †

Misdirection of a certificate.

The statute does not require any particular direction; and therefore it is effectual to its purpose, whether addressed to any particular place, or addressed in general terms, or not addressed at all, provided it contain an acknowledgment of the settlement of the persons certified for. ‡ In the words of Lord Kenyon, however, as a certificate is not a transferrable instrument from one parish to another, which having performed its duty in one place, can be assigned to another, § for then it would operate as a licence to vagrancy, there must be a *particular parish* in contemplation at the time of granting it. ||

Discharge of a certificate.

We come next to the consideration of the means by which a certificate may be wholly discharged.

They are various. Apprenticeship, or hiring and service, in any *third parish*, ** an order of removal by justices, †† desertion or abandonment of it by the party certified, ‡‡ by the renting of a tenement of the value of 10*l.* *per annum*, by the purchase of an estate for 30*l.*, and also by the possession of property by operation of law.

With respect to a certificated person becoming possessed

* 2 Bott. 578.

† Ibid. 584.

‡ 2 Str. 1163.

§ 1 E. R. 438.

|| 4 T. R. 251.

** 2 Bott. 578. 581.—2 Pract. Expos. 564.

†† 2 Bott. 602.

‡‡ Id. 603.

of an estate by operation of law, the general comprehensive rule is, as has been noticed in a preceding page, that "any person who has an estate of freehold, copyhold, or for years, by act of law, (as descent, marriage, executorship, or administration,) may dwell upon it as his own; and is not removeable; and gains a settlement if he continue forty days, though under 10*l. per annum*; but he must *abide* forty days in order to gain such settlement." *

And where a cottage was devised by will to a certificated person, "*to live in during his life*," it was held, with residence, to discharge the certificate. †

And a purchase, which of itself is sufficient to gain a settlement, is of course sufficient to discharge a certificate; ‡ but a certificate, it has been observed, may also be *abandoned*, though the party do not any of the acts which actually go to *discharge* it; as where a certificated person leave the parish to which he is certificated for *some permanent engagement*, which manifests his not having an intention of returning; for then the certificate is considered as *functus officio*. §

Abandonment
of a certificate.

And such cases are generally very distinguishable from those, in which the *manner* of a person's departure conveys an intimation that it is only for a *temporary purpose*; as where his business is of a mere occasional nature, or where he leaves his family behind him as in his *domicile*. ¶ If a certificate be not either discharged, or abandoned by any of the modes above pointed out, its general operations are "that it extends to poor of all denominations; to legitimate children born of certificated persons after the granting thereof; to a second wife taken after, and to her children born after, the granting thereof." ** It does not, however, extend to a bastard born after, except in the case of the mother being pregnant with it *at the time* of granting the certificate, such certificate referring specially to such child, in *ventre sa*

Extends to
poor univer-
sally.

Children born
after granting.

* Burr. S. C. 307.

† Id. 85.

‡ Id. 206.

§ 1 T. R. 354.

¶ 5 T. R. 526.—3 T. R. 399.

** Burr. S. C. 182. 314.—2 Bott. 580.—Id. 593.

mere; * nor to grand-children (unless specifically under the protection of, and part of the family of, the grandfather, or themselves being individually named); nor to children grown to maturity, and emancipated.†

To expatiate diffusely on points which have been established by a long succession of determinations, to be found in all the books which treat of the duties of justices, is not within the design of this particular work. On the division of the subject, therefore, especially under consideration, a very few recent decisions, which relate rather to considerations *arising out of* certificates, than to the direct operations of certificates themselves, or to the voluntary dereliction of them, must conclude this portion of our exposition.

Distinction taken between person nominated in a certificate residing under the certificate, and residing *suo jure*.

In April, 1790, M. B., father of pauper J. B., being resident in Leek Wootton, went from thence with his family, of which J. B., the pauper, was one, to reside with M. B.'s father, at Milverton, who rented a tenement there at 6*l.* per annum, but of the value of 10*l.* per annum. The old man died, leaving a will, by which he devised his interest in the tenement to his son M. B., and appointed him executor. M. B. remained in this tenement many years. In 1791, and while he was so in possession, he applied to Leek Wootton for a certificate, which the parish-officers granted him, acknowledging himself, his wife, (J. B. the present pauper, then about twelve years old,) and other children *by name*. J. B. continued to reside with his father M. B. at Milverton on this tenement five years after the death of his grandfather, but never gained any settlement in his own right.

The question for the court was, whether M. B., the father, having gained a settlement at Milverton by his occupation of the tenement of 10*l.* per annum value, subsequent to being certificated by Leek Wootton, his son, (the present pauper J. B.) could gain a derivative settlement from his father, having been inserted *by name* in the certificate, and therefore resident under it *suo jure*, and not as part of his father's family. All the preceding cases were

* Burr. S. C. 650.—7 T. R. 362.

† 4 T. R. 797.

pressed into the service in argument.* The judgment was in substance as follows:

After remarking upon some discrepancies among the former determinations, Lord Ellenborough, C. J., said, "there is nothing in the statute which requires the nomination of the constituent parts of a family. It is mere artificial reasoning which makes the distinction between such of the children as are, and such as are not, named in the certificate, a distinction which the act itself does not make. Then as the child, *though named*, was still to be considered only as a constituent part of the family, it brings it to the question, 'Whether he was ousted of his derivative settlement from his father?' Upon that point the language of Lord Mansfield is founded in reason, and not opposed by the act, viz. that the children of all parents must have the settlement of the father, until they acquire another for themselves. I think, therefore, the pauper in this case was not repelled from his father's settlement by the circumstance of having been named in the certificate."

Le Blanc, J., said, "this case was distinguishable from those of Testerton and Batheaston, which had not decided that the son coming into a parish, and continuing as part of his father's family under a certificate, is not capable of having his derivative settlement shift with his father's; but only that the settlement of a child *named* in the certificate, who had *ceased to be* part of his father's family, should not shift with that of his father. Here the pauper continued part of his father's family, and had gained no settlement of his own. His being named in the certificate, therefore, does not prevent the shifting of his settlement with his father's."

Bailey, J., said, "By the words of the act, indeed, the settlement of a certificated person can only be acquired in the certificated parish by two modes, and this is not one of them. But the fallacy of that argument is this—that the children do not come into the parish under the certificate *suo jure*, but only as part of the father's family." †

* 2 Pract. Expos. 560.

† 16 E. R. 118.

Certificate acknowledging paupers, with all their children born, or to be born. One of them (already born) afterwards becomes the head of a separate family, and resides in the certificated parish. Such child so certificated under the general words, and so becoming the head of a family apart from his father, can communicate a settlement to his apprentice in such certificated parish.

J. Cass, the father of R. Cass, (the pauper's master) resided at Bingham, under a certificate from the overseers, &c. of Sunderland, which had been duly delivered, acknowledging T. Cass and Jane, his wife, to be legally settled within their township, and that, as such, "they engaged for themselves and successors, &c. to receive them the said T. and Jane Cass, their child or children, born, or to be born, in their said township, as persons legally settled, whenever they, or any of them, should become chargeable, or upon any other occasion whatever." R. Cass, the pauper's master, was born at the time of the certificate so granted, and during the time of the pauper's serving him was a married man, residing with his family in the township of Bingham, *apart from his father*, but it did not appear that he had actually gained any settlement there. The question was, whether the pauper gained a settlement in Bingham by such service and residence with T. Cass.

Lord Ellenborough, C. J., said, "The certificate engages to receive the father and mother, their child or children born, or to be born." The overseers might not know the name of the son, or whether there was any, but it is plain they meant to comprehend *the whole family with which the parents should migrate*. The parents do migrate with their son into another township, and there the son afterwards separates from them, and becomes the head of a distinct family, and so from that time was emancipated. This case comes within that of R. v. Mortlake, (6 E. R. 397.) and is distinguishable from that of R. v. Sowerby, (2 E. R. 276.) wherein the party continued to reside with his mother.* A settlement was certainly *gained by service* under this indenture, the service being with a person not at the time protected by a certificate." Of this opinion was the whole court. Order quashed.†

Pauper certificated as part of his father's family, but not by name; put out apprentice in

The pauper's father resided in Armley, under a certificate from Morley, acknowledging him by name, his wife by name, and *three daughters by their respective names*. The pauper, at about twelve years old (his father being

* 2 Pract. Expos. 558. *et sequent.*

† 1 M. & S. 669.

dead, and he residing with his mother at Armley under the certificate, as part of his late father's family) was bound apprentice by the overseers of Morley, to one Lester, of Morley, till the age of twenty-one. He served in Morley under the indentures for seven years, and then, *with his master's consent*, returned to Armley, where his mother and family then resided under the certificate, and still reside, to serve one Gaunt in Armley. The pauper continued in Gaunt's service till the expiration of his indentures. He then hired himself to Gaunt for a year, and served that, and three other years, living *with him in Armley all the time*, and not with his mother at any time from his return to Armley to serve out the remainder of his apprenticeship.

This case had been amended more than once, and as often argued. The question was, whether the pauper gained a settlement in Armley by hiring and service?

In conformity with the opinion of the justices, it was contended, that, although the pauper himself was not mentioned *by name* in his father's certificate, the case finds, that he *was residing under it* at twelve years of age: and unless he was discharged from it, he could not gain a settlement by hiring and service. Then, it was clear, that the service *under the indentures* in the certifying parish, as well as in the parish certified, would not gain a settlement in discharge of such certificate.

Lord Ellenborough, C. J., delivered the judgment of the court in substance thus: "First, the pauper is not mentioned in the certificate by name; but is merely comprehended in his father's certificate as a part of his family. Secondly, he never returned to his mother, after having quitted her house on going to serve under his indentures, and was arrived at twenty-one years of age, when, at the expiration of his apprenticeship, he hired himself for a year, and served that and others. The case of *R. v. Ingworth*, is the nearest of those cases which have been cited in support of the order, but there is this difference, that *there* the child when he hired himself was *under age*. *R. v. Roach*, and *R. v. Cowhoneybourne*, (10 E. R. 89) are decisive. Although not cases respecting a certificate, they establish

the certifying parish, leaving his father's house and serving for seven years, then returning and serving with his master's consent the remainder of his term in the certified parish, but not returning to his father's house, arriving at twenty-one years of age, and hiring himself for a year, and serving the same in the certified parish, is emancipated, and gains a settlement in such certified parish by such hiring and service.

a principle which shows what it is, that constitutes a child part of his father's family; and whatever divests him of the capacity as one of his father's family in one case, divests him of the incapacity in another. We are of opinion that the pauper ceased to be part of his father's family, and by hiring and service gained a settlement in Armley." Order quashed.*

Relieving, how
far evidence of
settlement.

Before the subject of Appeals, as they respect *settlements*, be entirely closed, it is necessary to say a few words on a species of evidence, which has not unfrequently been exhibited, for the purpose of collecting an acknowledgment of settlement *by inference*; viz. the fact of a pauper, or his family, having been relieved by the officers of a particular parish *while resident in it*, in order to found upon that fact the inference, that such relieving was an acknowledgment of settlement. The utmost, however, that can be made of such an occurrence, is that it may operate occasionally by way of confirmation of other evidence; for of itself, singly, it is none.

Relief, indeed, given by the officers of one parish, to a pauper resident in *another* parish, makes a case of a different complexion; for, in such an instance, it cannot have been as casual poor, that they relieved him; and, therefore, especially where the relief has been frequently or systematically given, it amounts to that sort of admission, which must be rebutted by strong evidence of an opposite tendency, to overturn the obvious presumption. In one case, evidence of birth was offered to rebut it, but the court observed, that birth was, of all evidence of settlement, the weakest.†

There have been several cases determined on the question; and, though some have gone much further than others in establishing this doctrine, one of them is so full and decisive, that a recital of Lord Ellenborough's judgment shall conclude the subject. It was in a case of *R. v. Chat-ham, (Inh. of)* and his Lordship said, "It is important on subjects of this kind that there should be one uniform rule,

* *R. v. Morley*, 2 M. & S. 417.

† *R. v. Wakefield*, 5 E. R. 335.—*R. v. Stanley*, 15 E. R. 351.

so far as is consistent with law; and the rule having been once laid down, that the bare fact of giving relief to a pauper *within* the parish, was no evidence of his settlement there, because it might be given to him as casual poor, it is proper to abide by it. If relief were offered in this manner for any length of time, it might give occasion to different inferences; either that the party receiving was a settled inhabitant, or merely that his settlement could not be known. That would bring it to an alternative case, on which the session might draw their own conclusion, and the difficulty would still exist. Upon the whole, therefore, it is the better rule to adopt, to say, that it does not amount to evidence of the settlement. There would be great impolicy in allowing it to have weight, for if parish officers by giving relief were to make evidence against themselves, as to the settlement of the pauper, they would perform their duty to casual poor with great reluctance." *

It would be foreign to our purpose here to discuss the *Removals*. subject of the removals of the poor *at large*, because that is chiefly the duty of magistrates as individuals, and not in their capacity of justices *in session*: referring the reader, therefore, to other authorities on that part of the law, † we pass to the *consequences* of removals, as they may be made a subject for the deliberation, and judgment, of the sessions; observing only, in the words of a case recently decided, that the removal of a pauper can only be to the place of his *last* legal settlement; on the extreme supposition, therefore, that such place of *last* legal settlement ceases to exist, he cannot be removed to any other place of anterior settlement. ‡

But first, it may be advanced generally, that "an order of removal *unappealed against*, within the restrictions prescribed by statute, is conclusive; and that the settlement of the party designated in that order, is, at that time, in the parish receiving under the order, and not appealing against the same."

By 13 & 14 Car. 2. c. 12. so frequently noticed, "*all* Statutes giving appeal to the sessions, &c.

* 8 E. R.

† Pract. Expos. title, POOR, REMOVAL OF.

‡ R. v. Salughton, 2 Barn. & Ald. 163.

persons who think themselves aggrieved by any judgment of the two justices, may appeal to the justices of the peace of the said county at their quarter sessions, who are to do them justice, according to the merits of their cause."

To the next general quarter session

And by 8 & 4 Will. and Mar. c. 11. which orders the churchwardens and overseers to receive paupers removed by orders of two justices, it is provided, "*that all persons who think themselves aggrieved by any judgment of the said two justices, may appeal to the next general quarter session of the peace.*"

For the county, riding, &c. and not elsewhere.

And by 8 & 9 Will. 3. c. 90. "the appeal against any order of removal shall be prosecuted at the general or quarter sessions for the county, division, or riding, wherein the parish, township, or place, from whence such poor person shall be removed, doth lie, and not elsewhere."

Reasonable notice.

And by 9 Geo. 1. c. 7. "no Appeal from any order of removal shall be proceeded upon, unless *reasonable notice* be given by the churchwardens or overseers of the parish or place who shall make such Appeal, unto the churchwardens or overseers of the parish or place from which the poor person shall be removed; the reasonableness of which notice shall be determined by the quarter session to which the Appeal is made; and if it shall appear to them that *reasonable time of notice* was not given, then they shall adjourn the said Appeal to the next quarter session, and then and there hear and determine the same."

Defects of form.

And by 5 Geo. 2. c. 19. "on all Appeals to the sessions against the judgments or orders of any justices of peace, the sessions shall cause any defect of form that shall be found in any such judgments or orders, to be rectified and amended without any costs to the parties concerned; and after such amendment shall proceed to hear, examine, and consider, the truth and merits of all matters concerning such judgments or orders; and examine proofs relating thereto, and make such determinations as if there had not been any defect or want of form."

Justices charged to the rates.

And by 16 Geo. 2. c. 18. "It shall be lawful for every justice of peace to execute all acts appertaining to his office, so far as the same relates to the laws for the relief, mainte-

nance, and settlement, of poor persons; notwithstanding any such justice is rated to, or chargeable with, the taxes, levies, or rates, within any parish, township, or place, affected by any such act of such justice. Provided that this act shall not authorize any justice to act in the determination of *any Appeal* to the quarter sessions for any county or riding, from any order, matter, or thing, relating to any such parish, township, or place, where such justice is so charged or chargeable."

And by 8 & 9 Will. 3. c. 30. for the more effectually Costs. preventing of vexatious removals and Appeals, it is enacted, "That the justices of the peace of any county or riding, in their general or quarter sessions of the peace, upon any Appeal before them, there to be had, concerning the settlement of any poor person, or upon any proof before them there to be made, of notice of any such Appeal to have been given by the proper officers to the churchwardens or overseers of any parish or place (though they did not afterwards prosecute such Appeal) shall, at the same quarter sessions, order to the party, in whose behalf such Appeal shall be determined, or to whom such notice did appear to have been given, such costs and charges in the law, as by the said justices, in their discretion, shall be thought most reasonable and just, to be paid by the churchwardens, overseers, or any other person against whom such Appeal shall be determined, or by the person that did give such notice; and if the person ordered to pay such costs shall live out of the jurisdiction of the said court, any justice where such person shall inhabit, shall, upon request to him made, and a true copy of the order for the payment of such costs, produced, and proved by some credible witnesses upon oath, by warrant under his hand and seal, cause the money mentioned in that order to be levied by distress and sale of the goods of the person who is ordered to pay the same, and if no such distress can be had, he shall commit such person to the common gaol for twenty days."

And by 9 Geo. 1. c. 7. "If the court shall determine in Maintenance. favour of the appellant, that such poor person was unduly removed, then the same quarter session shall award to such

appellant so much money, as shall appear to have been reasonably paid by the parish or place, on whose behalf such Appeal was made, for the relief of such poor person, between the time of such undue removal, and the determination of such Appeal; the said money, so awarded, to be recovered in the same manner, as costs and charges upon an Appeal, according to the 8 & 9 Will. 3." .

And the court of B. R. will grant a *mandamus* to the sessions to allow those costs.*

Most of the provisions contained in these various statutes have indeed been, to a considerable degree, incidentally treated of, in anterior pages relative to the *settlements* of the poor, preliminary to the consideration of the nature of Appeals generally; but it was considered necessary, to introduce them here in a connected point of view, as much of what remains to be noticed referable to Appeals arising out of the other purposes of the poor laws, viz. the *maintenance and removal* of paupers, depends upon the general design of them collectively, as much as upon the particular expressions in them individually.

Reasonable
notice.

With respect to the *reasonable notice*, directed by 9 Geo. 1. in cases of orders of removal, much has been already observed. What shall be deemed *reasonable notice* must be regulated by the circumstances of each particular case, but *also*, in some degree, by the practice of the court, before which the Appeal comes; for it is incident to every court to lay down such certain rules for its own proceedings, as will afford the most general accommodation to its suitors; to which rules, therefore, such suitors are bound to pay a general obedience.

And although reasonable notice may not have been given, the session cannot for this *quash the order* of removal: it is only a ground for *adjourning the Appeal*. Thus in *Tr.* 10 Geo. 1. the session quashed an order of justices, and assigned for a reason, "that there was not due notice given of the Appeal," pursuant to the statute 9 Geo. 1. But by the court: "The order of session must be quashed, because

* 2 Bott. 756.

due notice not being given was no reason to quash the order of two justices, though it might be a reason to adjourn the Appeal." *

Neither can sessions *refuse to receive* Appeals, on the ground that due notice was not given; for the notice relates only to the *hearing*, and not to the *receiving* the Appeal. Indeed they are bound to *receive* an Appeal against an order of removal, although *no notice* has been given. †

And after *receiving* it, if they are satisfied that notice *sufficient* for trial *could not* have been given, they may *respite* the hearing; but of that *sufficiency* all sessions are to judge. As where an order was made on the 26th of November, and executed on the 28th: the appellants attended the next quarter session held on the 13th of January following, and moved the court for leave "to lodge the Appeal, and to respite the hearing thereof," to the then next general quarter session. The following entry was made by the session: "For as much as it appears to this court that there has been sufficient time since the removal of the paupers for the appellants to give notice, and come prepared to try this Appeal at this session, and no cause shewn why they did not proceed accordingly; it is ordered that the motion *for lodging the same, and respiting the hearing to the next quarter session, be rejected.*" The court of B. R. were of opinion, "that the justices had not acted wrong, for the motion was in effect to adjourn the Appeal; and it was evidently the intention of the parties not to enter the Appeal, *unless the court would* adjourn it: the justices are to judge of the reasonableness of the time; and in some counties they *establish a rule, regulating the time of notice*; here it appears that the order of removal was executed on the 28th of November, so that there was sufficient time for the appellants to give notice, and to come prepared to try it; and the justices who are to judge of this thought so."—*Mandamus* refused. ‡

Notwithstanding, however, that sessions have the power of exercising a discretion respecting the reasonableness of

Court of B. R.
have a visita-
torial jurisdic-
tion.

* Foley, 261.

† 7 E. R. 549.

‡ 3 T. R. 150.

notices, it must be a sound discretion, and they may not exercise it capriciously; for, as was said in one case by Lord Ellenborough, C. J., "The Court of King's Bench have a kind of visitatorial jurisdiction over them, by which they will correct the errors of justices." *

Overseers of
the poor.

As was recently observed on another occasion, the courts of quarter session having no *original* jurisdiction in the appointment of overseers of the poor, they can exercise no authority over the matter, but by Appeal, and, therefore, with that part of the subject alone, have we any concern here.

Their jurisdiction, through the medium of an Appeal, over the appointment of overseers, extends to those appointing, as well as to those appointed; for, by the statutes, in which originates the whole system, it is said, that *if any person* shall be aggrieved by the determination of the justices, he may appeal to the sessions." †

Who may
appeal.

The person *appointed* may, therefore, appeal, and the grounds of *such* Appeal generally are, that the party is either in too high, or too low, a situation of life, to be the object of the statute, or that there is some objection arising out of the sex, or other *personal* circumstances, of the individual.

The parishioners also, under the same description of "*any persons aggrieved,*" may appeal, on account of the unfitness of the person appointed by the justices. ‡

Of the statutes relative to this subject, that of Eliz. directs appeals to be only "to the quarter sessions," generally; that of Geo. 2, "to the *next* general, or quarter, sessions." It is by no means settled that the *latter* is a repeal of the *former* § statute, respecting the *restriction of time* for an Appeal; but in proceedings under the stat. of Geo. 2. sufficient

* 10 E. R. 404.

† 43 Eliz. c. 2.—Amended by 17 Geo. 2. c. 38.

‡ See Pract. Expos. *title, Poor, Overseers of*, sect. 1.

§ Rex v. Justices of Dorsetshire, E. R. 200.—However, though it was said in this instance, by Lord Ellenborough, C. J., that it was not settled, that one was a repeal of the other, there are some strong cases to shew, that such is the general understanding, especially Rex

explanation has been already given of the interpretation of the word "*next*."

At all events, costs can only be obtained in proceedings under the latter statute.

The rate itself presents the most frequent source of ap- The rate for relief of the poor.
 peal, on the ground of its *illegality, irregularity, or inequality*.

1st. As to *illegality*. A rate is illegal in its origin and Illegality.
 foundation, which is made for unlawful purposes, or which is made, or allowed, by persons not having jurisdiction or competent authority.

2dly. As to *irregularity*. That is when a rate is made, Irregularity.
 and allowed, by the proper parties, and legal in its commencement, but by some omission in its progress is rendered invalid.

3dly. As to *inequality*. A rate may be unequal in Inequality.
 many ways. By rating all persons liable to be rated, but not in due proportions; by wholly omitting to rate some who ought to be rated; or by rating property which is not the subject of a rate, as well as by omitting to rate property which is legally liable to be rated. All of which are sufficient grounds of Appeal.

Of these in their proper order. The foundation of all parochial rating, is in the statute of 43 Eliz. c. 2.

By that statute "the church-wardens and overseers of the poor of every parish, or the greater part of them, shall with the consent of two justices, (1 *Qu.*) dwelling in or near the parish, or division, raise weekly, or otherwise (by taxation of every inhabitant, parson, vicar, and other, and of every occupier of lands, houses, tithes impropriate, appropriations of tithes, coal-mines, or saleable underwoods, in the parish, in such sums of money as they shall think fit), a convenient stock of flax, hemp, wool, thread, iron, and other necessary ware and stuff, to set the poor on work; and also money for the relief of the lame, impotent, old, blind, and others, being poor and not able to work; and also for the putting out of poor children apprentices, and to do all other things concerning the premises.

v. Coode, 1 Bott. 235.—Rex v. Micklefield,—Cald. Ca. 507.—R. v. Atkins, 4 Term R. 12.

“ And the mayors, bailiffs, or other head-officers of every town corporate and city, being justices of peace, shall have the same authority within their jurisdiction, as justices of the peace of the county.”

Also by 13 and 14 Car. 2. c. 12, which authorizes justices to appoint separate overseers in places that cannot have the benefit of 43 Eliz. c. 2. “ The justices of peace within the said counties shall have like powers to raise and levy moneys, and to execute all other acts within every township or village, as is appointed for them to do within any parish.”

And by 17 Geo. 2. c. 3, “ The church-wardens and overseers and other persons authorised to take care of the poor in every parish or place, shall give public notice in the church of every rate for the relief of the poor, allowed by the justices, *the next Sunday* after the same is allowed, and no rate shall be valid, so as to collect the same, unless such notice shall have been given.”

By 17 Geo. 2. c. 38, “ Overseers of the poor within every township or place where there are no church-wardens shall execute all the acts and powers concerning the relief of, or relating to, the poor, as church-wardens and overseers may do by this, or any former statute concerning the poor.

Appeal.

“ And if any person shall be aggrieved by any assessment, or shall have any material objection to any person being put in, or left out of, such assessment, or to the sum charged to any person or persons therein, he may, giving reasonable notice to the church-wardens, or overseers, appeal to the next session for the county, riding, division, corporation, or franchise; but if reasonable notice be not given, then they shall adjourn the appeal to the *next quarter* session after;—provided, that in all corporations or franchises not having four justices, the Appeal may be to the next *general or quarter* session for the county, riding, or division, wherein such corporation or franchise is situate.—And on all appeals from rates, the justices shall amend the same in such manner only as shall be necessary for giving relief without altering such rates with respect to other persons mentioned in the same; but if, upon Appeal

from the whole rate, it shall be found necessary to set the same aside, then they shall order a new rate to be made: and they may award reasonable costs on either side.

“ And copies of all rates made for the relief of the poor shall be entered in a book to be provided by the church-wardens and overseers, who shall take care that such copies shall be entered within fourteen days after all Appeals from such rates are determined, and shall attest the same by putting their names thereto; and all such books shall be preserved by the church-wardens and overseers, or one of them, whereto all persons assessed, or liable to be assessed, may resort, and shall be delivered over, from time to time, to the succeeding church-wardens and overseers as soon as they enter into their offices, and shall be produced by them at the general or quarter sessions, when any appeal is to be heard.”

Copies of rates to be kept and produced on Appeals.

By 41 Geo. 3. c. 23. The difficulties which were found to arise from the partial amendment of rates, instead of quashing them entirely, are remedied by enacting that, “ Where this mode takes place, the monies actually assessed upon other persons than the parties whose proportion has been thus altered on Appeal, shall be recoverable in the same manner, as if there had been no such Appeal, and shall be deemed as payment on account of the next effective rate; that the monies *ordered to be* assessed upon any person, shall be recoverable in like manner as if they had originally been so inserted in the assessment; and if any person's name shall be ordered to be struck out, or his assessment to be lowered, that such extra sum as he shall have paid over and above what was right, shall be returned by the overseers, with all costs, charges, and expences occasioned by such persons having paid or been required to pay the same, recoverable on refusal by distress, and all such means as the poor rate assessment may by law be recovered.

Proceedings when rate amended only, not quashed.

“ All notices of Appeals to be in writing, and served upon two or more of the church-wardens and overseers; such notice to specify the particular grounds of Appeal,

Notices of Appeal.

and no other ground, unless by consent of parties to be gone into."

Taking a general view of these statutes then together, as forming a system, we have to examine the three objections of illegality, irregularity, and inequality, in the execution of them, premising only a few remarks on the technical interpretation of some expressions in these statutes, which are,

No rate till allowed.

1st. That *next session*, with respect to commencement of reckoning, means, *next after allowance*,* for it is no rate till it has been allowed, and therefore till then the other interpretation of the word *next*, which has before been explained, is not applicable.

Adjourned session.

2dly, That an *adjourned session* may take cognizance of the Appeal,† and may adjourn again before they give judgment.‡

Names to be specified in an Appeal.

3dly, That the notice of Appeal, when it is on account of *particular persons* being omitted, &c. must specify those particular persons *by name*: for otherwise it would be neither a notice of Appeal against the rate generally, nor against the rate for partiality as to *individuals*.§

No costs unless Appeal have been heard.

4thly, That the power given to the sessions to award costs, presupposes the Appeal has been *entered, and determined*, and therefore unless such have been the case, although expences may have been incurred in preparing a defence, none can be given. ||

Illegality further explained.

A rate must *necessarily* be *illegal*, which is made in contradiction to the provisions of the statute which ordains it. Therefore a rate made as for a parish, or a vill, which is neither one, nor the other; or which is made, or allowed, by persons not having the authority which is specified by the statutes; or which professes to be made by a greater, or a less, number of persons, than that to which the statutes have restricted the number of officers; is no rate at all, and cannot be enforced by *mandamus*, or by any other legal process; for if the source be bad *ab initio*, that which

* 4 T. R. 12.

+ 7 T. R. 107.

† 2 Bott. 730.

§ 1 Bott. 274.

|| 2 Bott. 787.

flows from it cannot be efficient,* as appears by a recent case, Mich. 55 Geo. 3, which was that of two substantial householders having been appointed, by two justices, overseers of a certain district which had only lately become inhabited, but which was become populous, and appeared to stand in need of such a description of officers. The proceedings were removed by *certiorari* into B. R. upon affidavit; and the court unhesitatingly decided, that in order to support such appointment, it must distinctly appear that the place for which it is made, is an ancient vill or township, *de facto*.†

So, if the purpose, for which the rate professes upon the face of it to be made, be unlawful, it is sufficient ground for resisting it.

A poor's rate can *only* be made for the relief of the poor; A poor's rate it therefore cannot be made to reimburse former overseers; can only be made for the relief of the poor. for an overseer is not bound to lay out money before he has received it by a rate.—This was established in Tawney's case, *Hil. 2 Ann.*—Tawney, being an overseer of the poor, laid out his money for their relief, and was turned out of his office before the end of the year, by which means he lost the opportunity of making a rate to reimburse himself. Upon this he obtained a *mandamus* directed to the churchwardens and overseers to make a rate to reimburse him, and it was argued, that there could be no such charge, neither by the common law, nor by the statute. By Holt, Ch. J. "We cannot order the parish nor overseers to make a rate to raise money to reimburse an overseer, but only to raise money for the relief of the poor, nor can they make a rate otherwise. The act of parliament is expressly so, and must be pursued. An overseer is not bound to lay out money till he has it; if he does, he must make a new rate for the relief of the poor, and out of that he may retain to pay himself. Tawney should have done so; he trusted where he needed not have done it; he has not pursued the means the statute gave him; and we cannot re-

* 1 Burr. R. 445, 446.

† R. v. Standard Hill, 4 M. & S. 879.

lieve him." And by the whole court, "The *mandamus* lies not."*

Prospective
rate.

And if the overseers make an assessment for the relief of the poor for six months prospectively, and a person rated think it objectionable on that ground, he may appeal to the quarter sessions; and it has been generally laid down by the court of B. R. that a prospective rate, from three months, to three months, was on the whole the most convenient method of rating.†

Legal rate rendered inefficient.

A rate may have a legal commencement, but be rendered inefficient in its progress by the omission of some form directed by the statutes. Therefore, if a poor rate be not published in the church *on the next Sunday* after it hath been allowed by the Justices, it is a nullity, and payment under it cannot be enforced, although it has not been appealed against at the sessions: and Lord Kenyon, Ch. J. said, "it was a radical defect in the rate itself, which nothing could cure."‡

Inequality
further explained.

To make a rate which shall not be liable to the imputation of inequality, every person *liable* must be rated; and *must be rated* in *proportion* to his property; and *every description of property* must be comprehended in the rate, which *law and usage* have determined to be rateable.

The interpretations of law and usage can only be collected from a succession of determinations, on each disputable point as it arose. The *inhabitaney*, and *occupancy*, of the *persons* rateable, have made two of the most important divisions of the general subject; the nature of the *property* rated, the other.

Rules of rating.

It is said by "Dalton, that the most reasonable way of taxing land, is according to the pound rate; and where a personal estate, as goods, money, or the like, is taxed, it ought to be in the same proportion as the lands; viz. the value of every 100*l.* at 5 *per cent. per ann.*"§

But the rent of houses or lands is no standing rule for making a poor's-rate, for circumstances may differ.

* Salk. 357.—1 Doug. R. 116. † 8 Mod. R. 10—6 T. R. 580.

‡ 4 T. R. 368.

§ Dalt. c. 73.

And the justices cannot make a *standing rate*; for if it be just at first, it may not be so after, for lands may be improved.*

Neither is an assessment according to the land tax good;—for in a case, *Hil. 2 Geo. 1*, where a poor's rate was made according to the *land tax*; it was objected to as not being an equal taxation, because the personal estate in the public funds was not chargeable to the land tax, but that it is to the poor's tax. The whole court, for that reason, set it aside.†

And the justices in session are the proper judges of the *proportion or equality* of poor's rates; therefore, in a case, *Tr. 19 Geo. 2*, the court refused a *mandamus*, directing them to insert the names of particular persons in a poor's-rate, upon affidavit of their sufficiency, and being left out to prevent their having votes for parliament men, “for that the remedy was by Appeal, and this court never went further than to oblige the making the rate, without meddling with the question who is to be put in, or left out, of which the parish officers are the proper judges, *subject to an Appeal*.”‡

Justices the proper judges of equality.

But, if it clearly appear *upon the face* of the rate itself, or by the circumstances *disclosed by the justices* on which they proceeded, that the assessments are unequal, the court will quash the rate.§

And the occupier of a house, or of an estate, ought to be rated according to its full value with all its improvements, and not according to the price which he may have paid for it, without taking into account the value of the improvements.||

Rate according to full value.

And the lessee of lands ought to be rated according to the present value of the lands, if the same have become of greater annual value than the rents reserved by the leases.**

Criteria of rating.

Certain occupiers of lands appealed to the quarter session against the poor's-rate, setting forth in their notice of Appeal, among other objections, that the rate was unequal and partial, because tenements and farms, consisting of

* 2 Salk. 526.

† Foley, 12.

‡ 2 Str. 1259.

§ Cald. Ca. 93.—6 T. R. 154.

|| 6 T. R. 154.

** 7 T. R. 549.

houses, lands, or grounds, were in such rate or assessment charged and assessed 1*d.* in the pound, and cottages or dwelling houses at only three farthings in the pound; *whereas such cottages or dwelling houses ought to have been rated and assessed on a par with tenements and lands at 1*d.* in the pound.* Upon hearing this appeal, the session quashed the whole rate, and ordered a new and equal assessment, stating the following case for the opinion of the court.—“That it was proved, on hearing the Appeal, that the rate, was made with the above distinction as to lands and cottages; that, from the year 1785 to 1776, a constant distinction had been observed in rating houses and lands, the former having always been rated in less proportion to their rents than the latter; that the land in general is burthened with no particular charges that are not incident to land in general; but that both lands and houses are subject to the usual repairs and taxes generally incident to each respectively.”—The proceedings having been moved by *certiorari*, the case was argued in court above, and in support of the order of session it was said, that in this parish there were circumstances which well warranted an equal assessment on each species of property; and it was suggested, that *nine-tenths of the burthen of the poor arose from the houses.*—By Lord Mansfield. “There can be no general rule as to the proportion between lands, and houses. It must depend on particular local circumstances. There are no circumstances stated in this case to shew, that houses ought to be rated lower: and if what is suggested be true, that is a strong circumstance the other way.—The objection unavoidably goes to the whole rate; for it is made *throughout* by a rule and proportion which the justices thought wrong; and therefore they could not amend, and could do nothing but quash the whole.”—The order of session confirmed.*

We now come to consider the last point alone, viz. *What persons, and property are liable to be rated.*

What persons
and property
liable.

These, we see, are described by the statute to be “Every inhabitant, parson, vicar, and other; and of every occupier

* Cald. Ca. 105.

of lands, houses, tithes impropriate, &c. coal mines, or saleable underwoods *in the said parish.*" So that *inhabitaney, occupation, and locality,* form the *foundations* of rateability; and the rate ought to be made according to *the visible estate* of the inhabitants, *both real, and personal*; but none is to be taxed to contribute to the relief of the poor in *one* place, on account of the estate he has elsewhere in any *other town or place,* but only in regard to the visible estate he has in the town where he is rated; and, as has been frequently said by the court, where personal property is rated, it must be *local visible property within the parish.*

But although a person *dwell* in another parish, yet in whatever parish he has lands in *his own proper possession,* "he is there," says Lord Coke, "in law a parishoner; for the place where he lies, sleeps, or eats, does not make him a parishoner there *only*; but as he occupies lands elsewhere, that makes him also elsewhere a parishoner *as to this purpose*; for if he should not be charged for those lands which he himself occupies, then no person would be charged with them, and it might happen that a person who inhabits in one town, might occupy the greatest part of the lands lying in another, for which no rate could be obtained."

And if a man uses only part of a house, he is to be considered as in the occupation of the whole, and rated accordingly, although the rest be unoccupied.*

It seems that no *persons* whatsoever, or, at least, no subjects, are, in respect of their landed property, so privileged, as to be exempt from this contribution. Neither are any *places* exempted, unless as being appropriated to some public, or charitable, or religious purposes.†

Thus, it has been adjudged, that a *bishop's palace* is rateable, because there can be no prescription against the payment of this tax.‡

So a *corporation* seised in fee of lands for their own profit, are, (within the meaning of 43 Eliz. c. 2.) *inhabitants* or

* 4 T. R. 447.

† Cald. Ca. 152.

‡ 3 Keb. R. 572.

occupiers of such lands; and in respect thereof liable, in their corporate capacity, to be rated to the poor.*

Royal palaces in the occupation of the royal family, are in deed, by particular provision, not rateable to the poor yet *servants* occupying separately house and land belonging to the crown, whether they pay for the same, by *rent*, or by *service*, are rateable. †

So, if the scite of a palace be demised to a subject, for a certain permanent interest, the grantees that occupy it are rateable for such property to the poor; for when the public purposes, which constitute the great ground of exemption, are no longer answered, the property no longer retains this privilege. ‡

So, also, the ranger of a royal park is rateable to the poor for inclosed lands in the park, yielding certain profits but not for the *herbage and pannage* (which is the surplusage above the sufficient pasture of the game therein), which yields no profits. §

But stables rented by the colonel of a regiment of horse by order of the crown, for the use of the regiment, are not rateable to the poor; for neither the possession of the crown, or of the public, are liable, and the stables thus used must be considered as in the occupation of the public. ||

These instances are sufficient to shew what is to be considered *public* property, or property dedicated to public pur-

* Cowp. R. 79.

† Cald. Ca. 1.—The precise interpretation of the term, *royal palaces* to the best of the compiler's knowledge, has never yet come in question in the superior courts, therefore there is no decided case on the subject; but he hazards a conjecture, from the general bearings of the discriminations admitted on questions connected with the subject, that no mansions but such as have been appropriated for the residence of the actual monarch for the time being, come within that description, and are comprehended among the exceptions to the liability of being rated. The reason of this interpretation appears to him to be obvious: they constitute a portion of the *public property*, although assigned for the personal accommodation of the sovereign.

‡ Cald. Ca. 153. § 2 H. Black. Rep. 265. || 2 T. R. 372.

poses, and therefore exempt from public burthens;—wherefore, in addition to what has been advanced, it is sufficient to remark, on that particular view of the subject, that, where the commanding officer in barracks had distinct apartments allotted him, one in particular for transacting the business of the regiment, and the others fitted up for the accommodation of himself and family who resided there with him, containing, among others, *kitchen, wash-house, and coach-house, together with a stable-yard and garden*; the latter were held rateable to the poor, but the former exempted.

Examples of public premises yielding private emolument.

And where persons have been appointed to the management of charitable institutions, the premises assigned for their habitation, if constituting part of their emolument, have been considered in the same light.

In other cases, upon the general principle, that whatever yields profits is rateable, chapels and meeting houses have been held so, where they *yielded profit* by letting out the pews, or by any other means.

This question was fully considered in some very modern cases, and the general doctrine before laid down, definitively established. The only ground, on which liability to be rated was strenuously called in question, was, that, although a great profit was made of the seats, &c. by trustees, in whose hands the property, and interests connected with it, were placed, the expences of obtaining preachers, &c. had exceeded the receipts. But the court observed, “that the sums expended on preachers, &c. were voluntary payments in the first place, not necessary deductions, but that be that matter as it might, the property was in its own nature of a rateable description, and profit upon it passing through the hands of the trustees, must, according to the universal principle, be rateable.”*

For in all such cases the two great considerations which must decide the question of rateability, are, whether there be an *occupation*, and that a *beneficial one*. The whole subject, so far as regards this point, appears to be compre-

Beneficial occupation. What is so.

* Cald. Ca. 310, 5 T. R. 79.—2 Pract. Expos. 947.

hended in what was said by the court of B. R. in one case, which was that of a female *appointed to take care* of a house of industry, but having *no distinct apartment for any purpose of personal convenience*. They said, "the question is, Whether this person, so acting as a servant, is to be rated to the poor, as the supposed occupier of this house?"

"Now if it be sufficient *to live in the house*, it might as well be said that, where a person having a coach-house, or a laundry, at a small distance from the mansion-house, permits the coachman to live in the one, or the dairy-maid in the other, these servants should be considered as the occupiers of these tenements, so as to be rated for them. A person so situated is only a servant, and not an occupier, either in the legal, or common, acceptance of the word. The legislature only meant that *beneficial occupiers* should be rated; therefore upon this principle it is that, where a profit arises, of *whatever nature the institution may be*, the party benefited shall, in proportion to the advantage he derives, be assessed to the poor. But where the occupation is not a *beneficial* occupation, there is nothing whereon the rate can attach." *

Difficulties
respecting
locality.

Thus much for that string of cases which regard an occupancy that is undisputed, coupled with a locality that is ascertained, but with some ambiguity respecting the term "*beneficial* occupation." We now come to those where the locality becomes a question of controversy, either with a view to the property to be rated, or to the mode of rating it. The subject is, indeed, susceptible of still further subdivision, and much variety of discrimination; but the professed design of the work restricting it to the discussion of principles, and a small portion only of practical illustration applicable to ordinary occasions, it will allow of little more than a mere enumeration of items which are comprehended under the term "*rateable property*."

The statute itself places *lands, houses, tithes, coal-mines, and saleable underwoods*, beyond controversy, simply con-

* 5 T. R. 587.—Cald. Ca. 158. 415.

sidered as such, without any adventitious circumstances annexed to their occupation, to make their rateability doubtful.

Under the term *land*, every thing arising immediately out of land has, by construction, been considered rateable. Thus, lime-works, potter's clay-pits, stone quarries, land covered with water and yielding a profit in tolls, in fish, in a dock, or in any other manner, not exclusive of, but connected with, the land; mineral springs, arising out of the land and occupied with any, the smallest portion, of the land; are all rateable, because the land is the foundation of their rateability.*

A person renting a quantity of land, together with a mineral spring thereon arising, at a gross yearly rent, was held rateable to the poor in respect of the whole of such rent, though in fact the annual value of the land, *independent of the spring*, is only in the proportion of two to eight of the reserved rent; for the profits arising from the spring are to be considered as part of the produce of the land. It was the case of *Rex v. Miller*, Tr. 17 Geo. 3. and it appeared that the defendant was a lessee of certain lands, containing about four acres with buildings thereon, and a certain well of mineral water thereout arising, called the Cheltenham Spa, at the yearly rent of one hundred pounds; that the lands and buildings thereon, *independent* of the well, were of the annual value of about twenty pounds; that the rent for the mineral water is eighty pounds; that the profits of this mineral water to the lessee, arise from the sale thereof, and the company resorting thereto, which is very various and uncertain; and that the lessee was rated for the premises at five pounds, which is equal to a rate of one hundred pounds *per annum* for lands in the said parish. —Lord Mansfield. “Nothing can be plainer than the present case. This is not a rate upon the profits of the well, but upon four acres of land, let to the defendant at one hundred pounds a year; and the value rises partly from the buildings, and partly from the spring that produces the

Land. What comprised under this term by construction.

Tolls of a sluice.

mineral water; therefore the profits of the spring are part of the produce of the land, and as such, I am clearly of opinion, it ought to be rated.*

The tolls of a sluice on a navigable river were held liable to be rated in the case of *Rex v. Cardington*, *Ea.* 17 Geo. 3. In this case it appeared that Ashley Palmer, Esq. was seised in fee of the right of navigation of that part of the river Ouze, which lies between Erith in the county of Huntingdon, and the town of Bedford; and of all the tolls payable for the carriage of coals and other commodities upon that part of the navigation. That he hath power to erect sluices and staunches for keeping up the water and carrying on the navigation; and that the said tolls are paid for passing through every sluice; and in a different rate for different sluices. That several sluices had been erected, and, in particular, one sluice across the said river in the parish of Cardington, at which the toll is three-pence per chaldron or load weight. That Mr. Palmer did not reside in the parish of Cardington, nor has he any person resident at that sluice to receive the tolls; but that the tolls for that sluice were received at Barford, or Eaton. That neither Mr. Palmer, nor any of the former proprietors, were assessed to the poor's rates for their sluices, or for the tolls or profits, but they have been for many years assessed to the land tax. That the parish had lately assessed Mr. Palmer to the poor's rates for the said sluices.—The court decided, that these tolls were rateable: and therefore affirmed the rate.†

The question was again decided in a case of *Rex v. Sir Arch. Macdonald and others*, the 50th of Geo. 3, in the judgment on which it was said by Lord Ellenborough, C.J. "Tolls are not rateable *per se*, but when connected and rated conjunctively with real and substantial property, situated in the parish, as yielding profit there by means of tolls, they are a proper object of rating within the act of Elizabeth."‡

Mich. 52 Geo. 3. The corporation of *Bath* had been

* *Cowp.* R. 619.

† *Cowp.* 581.

‡ 14 E. R. 324.

assessed to the relief of the poor in the parish of *Lyncomb-and-Widcomb*, as occupiers of certain springs, and reservoirs in that parish, of which they were the proprietors under a special act of parliament, for the purpose of supplying the city of *Bath* with water: of this water the said corporation made a clear annual profit of six hundred pounds, by its distribution within the city of *Bath*. The question (which came before the court, upon a special case from the sessions) was where the said corporation were liable; whether for the whole in the parish where the reservoirs were situated, which produced ultimately these great emoluments, or for the whole in the parish where such emoluments were immediately received, or whether rateable in any equitable proportion in the different parishes.

The substance of the judgment by Lord *Ellenborough*, C. J. was as follows:

"The corporation of *Bath* cannot be charged as inhabitants of the parish of *Lyncomb-and-Widcomb*, and therefore, if rateable at all under the statute of *Eliz.* must be so as occupiers of some one of the descriptions of property in that act. They are occupiers of the reservoirs, wherein they are authorized by law to collect the water, and such reservoirs are within the legal description of *land*; one of the descriptions of rateable property in the statute of *Eliz.* It is equally unquestionable that they constitute visible property in the parish where situate.

"But the whole of their emolument does not arise in this single parish; for those intermediate ones, in which the pipes that conduct this water from the reservoirs to the city are laid, are of course contributory to the profits." After these preliminary observations, his lordship said, "there were no adequate materials before the court whereon they could decide in how many parishes, and in what proportions respectively, the corporation of *Bath* ought to be rated, but that they were decidedly of opinion that the rate before them in which the corporation of *Bath* had been charged for the whole of their profits in the parish of *Lyncomb-and-Widcomb* was bad, and must be quashed."*

* R. v. Mayor of Bath, 14 E. R. 609.

In conformity with these were the following very recent cases, determined since the former edition of this work.

Land, of which the annual value is improved by a spring, may be rated to the poor at such improved value, although the owners and occupiers of the land do not receive the profits derived from the spring nor does any part become due in the parish where the land lies,

Appeal against a poor rate for the liberty of *Little Amwell*, by the Governor and Company of the *New River*, charging them in respect of land in their occupation in *Chadwell Mead*. The session confirmed the rate, but stated a case for the opinion of the court. It was extremely long in form, on account of the descriptions of the course of the river, &c. but in *substance* only raised a single question, viz. whether the said land, which, without the spring and not covered with water, would not be worth more than five pounds *per annum*, and which yields no profit to the company in the liberty of *Amwell*, may by law be rated in respect of the said land, the land and the water together being of the value at which it is rated, viz. three hundred pounds *per annum*?

In support of the rate *R. v. Miller* (*Cowp. R.* 619) *R. v. Parrot* (5 *Term R.* 593) and *R. v. Bath Corporation* (14 *East. R.* 609), were relied on; and the Court said they could not distinguish this case from the first-mentioned of those.

Lord Ellenborough, C. J. after many observations on minute points of difference between this and the previous cases, said, "Here is land covered with water enclosed in a basin, which falls within the legal description of land, and though a portion of the profits is derived from pipes, through which it is distributed to other places, yet it is found that the water has a *certain ascertained* value at the fountain-head; and it is enough to ascertain the local value of the property without inquiring whether it yields a return on the spot. The only case which has been pressed upon us against this rate is *R. Sulcoats* (12 *East. R.* 40); but that does not apply, because there the persons rated were merely servants of the public, and received no benefit, and had no divisible funds in their hands, either as trustees, or having any beneficial interest themselves. In the case of *R. v. Bath* the very decision assumed the rateability of the water where it was impounded, and the whole question turned on the proportion of rate in one parish out of many, not on the liability to be rated for the water at all to the parish in which it first

rose. The session has come to a right decision, inasmuch as the property is locally valuable in the parish where it is rated, although that value be derived from extrinsic circumstances, and although the profits are actually *received* elsewhere."

Grose and Le Blanc, Judges, likened the profit derived from this water conveyed to a distance before any profit was actually received, to corn grown on land, or bricks dug out of land, and converted into a saleable state in another parish, and said that "they had only to decide on the rateability of the property, the *quantum* of rate being a question entirely for the justices in session, and there could be no doubt of the rateability; they were bound by the case of *R. v. Miller*."

Bailey, J. said "the fallacy in those who contended against the rate wholly consisted in applying to land a rule applicable only to the incorporeal property of tolls, which exist as local visible property in the parish where they accrue, and before they can be rated they must exist as a toll. But this is a rate on land situate in the parish where rated. This is not a rate on the profits themselves, but on the land they occupy, from which they are derived. It does not follow that they are not also rateable in other parishes through which pipes convey this water, but that is a question of proportion with which the court above has nothing to do. There is a beneficial occupation of land in *Little Amwell* decidedly liable to be rated." Order confirmed.*

The defendant was rated to the relief of the poor of *Westbury* in the county of *Gloucester* "for a fishery." He appealed to the session, and a special case was made for the court above. It was argued exceedingly at length, and as the chief justice observed, in giving judgment, "with a display of great industry and learning," with reference to particular local customs, and to the meaning of particular expressions in the grant (for it was originally a royal grant of the manor with its appurtenances), as well as the application of those customs and terms to the subject matter of

Lease of a fishery, from a lord of a manor, where it is presumed that the soil of the river was part of the manor, conveys more than an incorporeal hereditament, and renders the lessee liable to be rated to the

* *R. v. New River Company*, 1 M. & S. 508.

poor as an occupier of land, though not a resident occupier.

the appeal, But the case, after all, so far as it can be generally useful to justices, resolved itself into a narrow compass. The manor, all its rights, members, and appurtenances thereto belonging, and all *that one fishery of the halves and halvendoles* with the fishings called *Unlawater*, with the appurtenants to the halves due and accustomed within the river *Severn*, &c. (the words on which the question arose) were granted by King Charles I. to Robert Lord Cary and his son, Henry, and their heirs for ever. Lord Carey, afterwards Earl of Monmoth, and his son, granted the said manor, and all its appurtenances mentioned in the said grant, to John Young. Young demised to one Rush for a thousand years one fourth of all those fishings of the halves and halvendoles, &c. (following the words of the grant, and a certain portion of all royal fishes to be taken within a certain limit, with certain exceptions introduced in this demise) *reserving certain rents* therein specified.

The present appellant claims this fishery with *all its rights and privileges* derivatively from this Young, the first lessee. The session confirmed the rate; and the material facts, which might be supposed to have influenced their determination, were, that the appellant, in the exercise of his right of fishery, generally used nets, which were laid on the beach, or bed of the river, varying the situation as the current of the river changes by the shifting of the sand; and sometimes they affix one end of the net to a pole stuck into the bed of the river. The question was whether the appellant, who was not a resident, was liable to be rated in respect of this fishery rented under the circumstances stated.

The arguments chiefly insisted upon in support of the order were, 1st. That it is probable the term "*halves and halvendoles*" denote a conveyance of some portion of the soil, viz. the right of the lord over one half of the soil of the river (and in support of this explanation was cited *Lord Hale, de jure maris*, 1 *Hargrave's Law Tracts*, 34). 2dly. That a demise of all his fishings is, like a grant of all a man's woods, and passes the soil. 3dly. That a reservation of rent necessarily imports, that there is something manorable out of which it is to issue, and to which the party may

have recourse to distrain, which cannot be by the grant of a mere incorporeal right. 4thly. That the demise of royal fishes is evidence that the soil of the river was parcel of the manor, and consequently passed to the lessee by the demise; for he that hath wreck of the sea, or royal fish, *infra manerium*, it is to be presumed has the shore as part of the manor, for otherwise he could not have the fish; so that if he grant the fish to another, he grants the shore also.

The court, in giving judgment, lamented "that the session had not given some explanation of the provincial terms *halves and halvendoles*; but taking the case as it stood, it was impossible to consider these words otherwise than as conveying something territorial, which construction is confirmed by the appellant having been in the constant exercise of landing nets on the shore, and fixing them to poles in the bed of the river. The session has confirmed the rate, and it having been their province to draw conclusions from the evidence, if any were to be drawn, it is sufficient if enough be stated to support their conclusion. Order confirmed." *

T. 53 Geo. 3. A company were rated to the relief of the poor of the township of *Spotland*, in the county of *Lancaster*, for and in respect of *the trunks and pipes, &c. for the conveyance of water belonging to the company*, situate and being fixed in the ground, and the profits thereon arising within the township. On appeal the session confirmed the rate, and stated a special case.

Water work company liable to be rated to the poor for the profit of main pipes, without any reservoirs.

It was admitted in argument, that the case of the Bath Corporation (*ante*, p. 631) must govern this, unless the difference of two circumstances made a difference in the construction of the statute, which difference was, that, in *that* case the company had reservoirs upon the land, on *this* they had none, but a bare avenue to convey the water through pipes in the land of others. For this case also, not only the commissioners are empowered to lay *main* pipes, but the inhabitants to lay pipes to their respective homes from the main pipes; so that it was contended each of

* R. v. Ellis, 1 M. & S. 652.

those inhabitants ought to be assessed as an occupier of land *pro tanto*.

The court however was of opinion, that, on the *first* point there was no distinction to be made between the case of a reservoir of a certain number of yards square, and a main pipe of so many inches diameter. The question, involved in the *second* point made, is a collateral one, viz. whether the inhabitants of the houses are, or are not, rateable; but the rate is on the main pipe, not on the collateral ones.—Order confirmed.*

Canal under
special circum-
stances.

The doctrine evolved from this succession of determinations, by anterior judges of the court of B. R. has been recently confirmed in its prominent features, under the authority of a new Chief Justice, in a case wherein it was not indeed the principal question before the court; but in the course of the judgment on which it was adopted. The principal question arose on the construction of two local acts of parliament for the making of two canals, which two canals were afterwards incorporated by a *third*, and *the whole* subsequently regulated as to the management, by a *fourth* act of parliament. The great question for the court of B. R., as transmitted by the quarter session, was the construction to be put upon the last-mentioned of these statutes, as it bore reference to the mode of rating, pointed out by one of the anterior ones; the judgment on this point is not material to the present enquiry; but in pronouncing it, Abbot, C. J. commences by saying, “By the case sent to us it appears, that the canal was made under the authority of an act of parliament, which made no express provision for exempting the canal from parochial assessments; *it followed therefore by law, that the canal was rateable according to its improved value: the inhabitants of the several parishes through which it passed had a right, had a vested right, to have it so rated,*” &c. &c.—Best, J. added, “The company, who, for several years have made considerable profits by this canal, cannot now seek an exemp-

* R. v. Rochdale Company, 1 M. & S. 635.

tion from the charges which the law imposes upon them. The parishes through which it runs have a vested right in having the company rated according to its produce, and we cannot divest them of this right, but by the authority of clear and unequivocal words of the legislature, commanding it so to be done."*

So late as Nov. 1, 1819, in a case *R. v. Milton*, argued before the judges of B. R. at Serjeant's Inn Hall, the principle of all the foregoing cases, respecting the unrateability of tolls, *per se*, and the rateability of the profit of water artificially conveyed, were confirmed.

A question was made Tr. 53 Geo. 3. whether certain lessees under a lord of a manor, of his right to *bot and free share of all calamine raised within the manor*, but not occupying any buildings, or land, nor resident in the parish, are liable to be rated, in respect of such profits, as beneficial occupiers. The Somersetshire session thought they were. Lord Ellenborough, in giving the judgment of the court, said, "the demise was a demise of a specific portion of the produce of the land, or in other words, land itself free from all risk and uncertainty. The whole is raised by the labor of adventurers, and when raised the lord is entitled to his share, which he demises. It is not a mere rent, or money payment, not a personal right, but part of the produce of the earth." To which Bailey, J. added that "the lord himself would have been liable if he had not demised his share of the produce, and he could not distinguish this from the case of granting a share in the land."†

On the other hand, it has been decided, in several cases, that the *casual profits* of a manor; tolls *per se*, and not attached in any way to land; a mere right of *way over* land, without any interest in the land itself; a drain, producing no beneficial interest; &c. are all *not* rateable property. Rights connected with, but not arising out of, land.

Thus, the defendant was rated to the poor in respect of certain *way-leaves*, or *liberties of passage*, over certain lands

* *R. v. Birmingham Company*, 2 Barn. & Ald. 576.

† *R. v. Baptist Mill Company*, 1 M. & S. 612.

in the township of Harraton, Durham, rented by him for conveying and carrying his coals worked out of his coal-mines and collieries in Walbridge to the river Wear, and there lodging the same in his staith till they are put into keels or lighters, and carried down the said river to the port of Sunderland, in the said county, to be there put on shipboard, at the yearly rent in the whole of 752*l.* 4*s.* being the amount of what he paid annually for such way-leaves or liberties of passage to the several owners of the lands through which the same way-leaves, or liberties, of passage are granted. On the appeal, the session confirmed the rate, subject to the opinion of the court.—Ashurt, J. “It cannot be said that the defendant was an occupier of any thing; for all that he has is a concurrent right given him of making use of this way-leave, at so much per ton, for all the coals that he should carry, which is nothing more than a purchase of the liberty of carrying every ton of coals. This defendant has only a bare licence, and in respect of such licence he is not liable to be rated.”—Buller, J. “This is only a bare right of passage, which is an easement, and not a grant of the profits of the land. And it is admitted that, if it be only an easement, it is not the subject of a rate; if he were rated for this, it would be a double rate. In the case of tolls, it is not he who pays, but he who receive the toll, that is rated. Great inconveniencies would result from rating every way-leave; for if a neighbour were to give a right of passing over his field merely out of friendship, and no rent were paid for it, such liberty of passage would not be the subject of a rate, because the land can only be rated in the hands of the occupier; but if he were to make an advantage of it, as such it may be rated in his hands.”* But where the party has the exclusive possession of the soil over which the waggon-way passes, he may be rated to the poor’s rate as the beneficial occupier.

Conjoint rate
of two things,

A rate was made upon certain trustees under a will of one Brown, for 2000*l.* annual rent, paid by a certain Mine

* 2 T. R. 90.—7 T. R. 578.

Company, for and in respect of the lead mines, and other minerals and fossils, (coals excepted,) within the parish of A., and also in respect of their being owners, proprietors, and occupiers of the moors, commons, and wastes, within the manor of A. Amount 2000*l.*, assessment 150*l.* at 1*s.* 6*d.* in the pound. By the court, "This rate is bad, because it is a conjoint rate in respect of *two* things, one of which is not rateable. If these trustees had been rated in a large sum, in respect of their being owners and occupiers of the moors, &c., perhaps the court might not have entered into the question of *proportion*, but here the rate is imposed in respect of *two* distinct things, the *rent*, and the *surface of the land*, the former of which is not rateable." *

one of which not rateable, from being only a rent on money payment, bad.

The profits of any thing attached to a house are for the purpose of rating, considered as part of the house itself.

Houses, what comprized under.

The mayor and burgesses of Gloucester were possessed of a house in the parish of St. Nicholas; and, being so possessed, erected a machine in a street leading by the said house for the purpose of weighing waggons. The court said, "It is like the case of the Cheltenham Spa. There is an extraordinary profit arising from this modification of the enjoyment. The only question therefore is, whether a man shall be rated for the property he has? If a house to-day is let for 30*l.* *per annum*, and to-morrow, if turned into a shop, would let for 50*l.*, when it is turned into a shop it shall be rated at 50*l.*" †

And upon the same principle, a house with a carding machine for manufacturing cotton, described in the rate as an *engine-house*, and both let and occupied together, though it did not appear whether the engine was fixed to the building, was considered as an entire subject, and to the extent of their value rateable to the poor. ‡

And in T. 55 Geo. 3. Rate made for relief of the poor of Saltwood in Kent; appeal, and rate confirmed by

Reservation of a division of rent for a pub-

* R. v. Walbank *et al.* 4 M. & S. 222.

† Cald. Ca. 262.

‡ Id. 266.—1 T. R. 721.

lic house, part being reserved for the premises, as appertaining to the realty, and the other as for a personal privilege to sell provisions, &c. is a fraudulent attempt to avoid being rated for the whole.

the session. Special case. A canteen in barracks was demised to one Bradford, by the commissioners of the barrack board, for an annual rent of 15*l.* *for the canteen and buildings*, and for the further sum of 510*l. per annum*, *for the privilege of using the same as a canteen, and selling therein provisions and liquors*, usually sold by sutlers, with a power of distress *for the aggregate sum*. Personal chattels, and the profits of trade, it appeared, were not rated in the parish. The question was, "whether the poor rate ought to be assessed on the 15*l.* received as the rent of the premises and their appurtenances; or whether upon the aggregate sum for which the power of distress was reserved?"

In support of the rate, it was contended, that the *whole sum reserved* was substantially a rent, and that the division into several parts, was only a colour to avoid an assessment upon the whole.

If Bradford were considered as exercising a public duty, he did it nevertheless for his individual benefit, and was therefore rateable. And many cases to that effect were cited.

On the other side it was attempted to consider the two considerations, for which the rent was paid, as distinct in their nature; one, the house, being real and fixed; the other, the licence to sell, personal and moveable with the person wherever he goes.

Lord Ellenborough and the court thought "this case of the canteen like the case of a soke mill, let at a higher rent, *because* it had an exclusive right to the mueture of the neighbourhood. So this house is made valuable by its vicinity to the barracks, and the profit is appurtenant to the tenement on account of its local situation. "The reservation is attempted to be made distributive, but is one entire taking of an entire thing, with the benefits incident to it; therefore rateable, not only in respect of the 15*l.* reserved nominally as *rent*, but of the further sum of 510*l.*" Rate confirmed.*

* R. v. Bradford, 4 M. & S. 317.

Tithes, either when retained in the hands of the parson, Tithes. or let for a modus, are titheable; but if a parson let all his tithes to one person, which person let them again, to each parishioner his own share, the first lessee is then the *occupier*, and the person to be rated, for they are not to be rated twice over. *

Coal mines are among the descriptions of property enumerated in the statute as rateable, and it has been attempted, by the argument from analogy, to make all other mines generally rateable. This however has been resisted by the courts, which have uniformly decided, that coal mines being rateable *eo nomine*, according to the letter of the statute, stand on quite a different ground from any other. If demised for a rent, they are rateable accordingly by the statute (whether producing any profit, or not) and rateable for profit beside, on the general ground, like all other property. But no mines of other kinds are rateable *quasi mines*, but, like all other property, on their produce in the hands of beneficial occupants. These positions are fully illustrated by the following leading cases, which have been confirmed by many others.†

Plaintiff, who had been distrained for non-payment of a Lead mines. poor's rate, and thereupon brought his action, was lessee under the crown, of "all mines of lead, with their appurtenance, within the soke and wapentake of Wirksworth, with the lot and cope within the said soke and wapentake, under the yearly rent of 144*l*. The rate was for lot and cope at 500*l*. *per annum*. 13*s*. 10*d*." The duty of lot, payable to the plaintiff as lessee of the crown, is the *thirteenth dish* or measure of lead ore got, *dressed*, and made *merchantable*, at all the lead mines within the said soke. The *cope* is 6*d*. for every load, or nine dishes of lead ore, *raised* at such mines. The said duties are paid to, and received by, the plaintiff, *without any risque or expense* in working the mines: in the year 1775, the duties amounted to the clear sum of 500*l*. but they are *uncertain*, and *vary* every year. By Lord Mansfield (who delivered the opi-

* Str. 524.

† 8 E. R. 387.

nion of the court): "The poor's rate is not a tax on the land, but a personal charge in respect of the land, and which is not charged at all before to the poor. In general, the farmer or occupier of land, and not the landlord, is liable to this tax; for it arises by reason of the land in the parish; and the landlord is never assessed for his rent; because that would be a double assessment, as his lessee had paid before. *Lead-mines* are not within the statute of 43 Eliz. c. 2. They are in themselves uncertain, and may prove unsuccessful to the adventurers. Taxes therefore upon the adventurers would be hard, and they are excused. But the person, (lord, or landlord) who, in case they do prove of value, receives a stipulated benefit from the profits or value of them, is not excuseable upon the same ground, and therefore is expressly charged to the land-tax, as that falls upon the landlord. He is alike liable to the poor's rates, for his visible real property in the parish; though, where the poor's tax is a charge on the lessees, the landlord does not pay in respect of his rent. Where the adventurer, or lessee of the mine, pays nothing, it is no double tax in any light; because the lord pays, *not* for that, which the *lessee* or adventurer is *excused* from paying for, but the lord pays for his *own*. It is not a mere casual profit, but an annual revenue, *if any*, and very different from the casual profits of a manor, which are not annual, for there may be none for years. But *if the mine produces profit to the miner, the lord's share is certain, annual*, and an annual rent is paid for it constantly. The miner is obliged to pay certain proportions to the owner of the land. What reason then is there to exempt these proportionable revenues? It makes no difference to the adventurer; it does not prejudice or benefit him. But as such obligatory payment is in respect of the land, the land-owner ought not to receive it clearer or neater, than any other of his estate, when he is at no trouble, expense, or possible risk. Therefore we are all of opinion, that the plaintiff is liable to be rated for this property." *

* Cald. Ca. 155.—Cowp. R. 951.—See the case of a calamine mine, *ante*, p. 637.

But that the lessee of a coal mine is liable to be rated, though he derive no profit from the mine, was decided in the case of *Rex v. Parrot and others*, Ea. Tr. 34 Geo. 3. The defendants, who were lessees of some coal mines, appealed to the session against a poor rate, which was there confirmed, subjected to the opinion of the court of B. R. as follows: The appellants held the colliery, for which they were rated, under a lease, which being lost, parol evidence was given of its contents. The lessees were bound by covenant to work the colliery, and they were bound to pay to the lessors a sixth part of the money produced by the sale of the coals, without any deduction on account of the expense of working: it was proved that, upon an average of the last three years, the appellants had paid 300*l.* 15*s.* 7*d.* to the lessors, as the sixth part of the money produced by the sale of the coals got from the colliery, during that time; that by paying this to the lessors, and also the expences of working the colliery, the lessees had lost two farthings and half a farthing on every ton of coals got from the colliery; that the colliery had always been, and still was, a losing adventure from the time of it's being first taken by the appellants; that they must have known that it would be a losing adventure at the time when they took it; and their inducement for taking it was, that, when they had worked out the coal in this colliery, they would be able to get coal of their own, which was adjoining to it; and that this was a cheaper way of getting at it, than any other which they could have adopted. It was admitted, that generally speaking, coal mines are rateable under the statute 13 Eliz. c. 2. which expressly mentions them; but it was contended that this rate is a tax on the possessors of property yielding a clear and visible profit; the words of the statute being, '*according to their ability*,' and that ability must be estimated by actual profits; and in this case it is expressly stated, that the lessees, so far from receiving any profit whatever, since they have been in the occupation of these mines, have actually been losers by the adventure; that according to all the preceding cases, if any person were rateable here, it was the landlord in respect of his

Coal mines not
producing
profit.

rent, and not the lessees, who, it is found, derived no profit whatever, after deducting the expences of the adventure.—By Lord Kenyon, C. J. “It is said that this burthen is to be laid where the benefit arises; but that rule cannot hold in a variety of instances that might be put. Suppose a landlord make so hard a bargain with his tenant, that the latter derive no benefit from the farm, must not the tenant be rated to the poor? the landlord certainly is not liable. This case differs from one of *Rowles v. Gell*, in this respect, which was the case of lead mines, *not rateable under the statute of Elizabeth*; and there the question was,—Whether, or not, the lessee was rateable for certain annual profits, which he received without any risk on his part? But here the property is rateable under the express words of the statute 43 Eliz. c. 2. It appears in this case, that there has been a clear profit of 1000*l.* a year. The appellants’ objection in this case is, that they have made an unprofitable bargain with the lessors. *That we cannot examine into. It is sufficient that they are occupiers of rateable property.*” *

Colliery exhausted.

In a case of a coal mine being *worked out*, and producing no profit to any one, Lord Ellenborough, C. J. said, “Where the mine is exhausted, the *subject matter* of profit is gone, although the rent, which was calculated upon the *probable* average produce of the whole term, may still be payable. With respect to the parish, the occupier is rateable for the *concurrent annual value during the period* for which the rate is made, and when the thing which he occupies no longer affords *such concurrent value*, the subject matter of rating is gone.” †

Saleable under-wood.

Saleable underwoods are the last species of rateable property, designated *by name*, in the statute we have been examining; and it has been determined, that they are rateable annually, to the relief of the poor, in proportion to their value, *though they should happen not to be cut down oftener than once in twenty-one years*; and such property is, at all times, rateable according to the improvement in its value, or in

* 5 T. R. 593.

† 8 E. R. 387.

the rent which might be fairly expected from it; for it is not necessary, that any of the profits should have been actually reaped, or taken away from the property, during the period for which the rate is made.*

The difficulty of ascertaining locality, which we must have observed all along to have entered so materially, and so generally, into the consideration of rateability, with respect both to *persons*, and *property*, constitutes a larger portion, than ordinary, of the consideration, in determining the rateability of purely personal property, as will appear from the following cases in conclusion of the subject. It was long a doubt, whether property *purely personal*, was, under *any* circumstances, rateable; next, to *what descriptions* of personal property the liability attached; thirdly, when it was of a transitory kind, *where* it became liable? Personal property.

In a case of *R. v. Andover*, in the 17 of Geo. 3. when the liability of personal property was a question much discussed, it was said by Aston, J. "That there are a great many cases, which say that local visible property may be rated, but the question is, *how* it must be done? Suppose it were done by the overseers; if notice be given to the several persons rated, and they think themselves over-rated, they have an Appeal to the sessions. So, if a house has been usually rated for the house and stock in trade altogether, the rate is so specified; and if the person has an objection because he is mounted too high, on an Appeal, *all that* is a matter to be laid before the justices in session, who act as jurymen with respect to the fact, and as judges with respect to the decision. Then the immediate point specified in the Appeal is produced, and notwithstanding the usage, if, upon the general question, it should turn out to be the law that personal property is rateable, then it must indeed be rated, though it never was so before."† Rateable.

Also in another case, *Mic. 9 Geo. 3.*—Lord Mansfield said, "To be sure, personal property is within the act of 43 Eliz. c. 2, and yet it is almost impossible to rate it, How rateable.

* 10 F. R. 219.

† Cowp. R. 565.

for it would be compelling persons to discover their debts."*

Stock in trade. And in another case the court said, "The personal property and stock in trade, to be liable, ought to be visible, liquidated, and ascertained; not casual, fluctuating, and uncertain."†

The subject of the rate, as the rateability must be shown by evidence.

Also, in *Rex v. White*, *Tr.* 32 Geo. 3. Lord Kenyon said, that the expression of Yates, J. in the last case was "If personal property be rateable, it is not to be done at random, and to leave the party rated to get off as he can; but the officer, making the rate, must be able to support what he has done, by evidence; and no personal property can be rated, but the clear liquidated surplus."‡

In a case where three persons were possessed, as co-partners, of stock, in the trade and business of common brewers and maltsters, to the value of 4000*l.* for no part of which they were assessed, the session upon appeal had quashed the rate, and ordered a new one. The question coming before the court of B. R. by a special case, it was decided, on its having been the duty of the session to have amended, not quashed, the rate; but Lord Mansfield took occasion to say, on the general subject of rating stock in trade, that, "in attempting to rate this stock, they would have discovered the wisdom of conforming to the practice of not rating it. If they had tried to have amended it, how would they have rated this stock? Are the hops, and the malt, and the boiler, to be rated at so much for each? or is the trader to be rated for the gross sum which his whole stock would sell for? If the justices had considered, they would have found out the sense of not rating it at all; especially when it appears that mankind has, as it were, with one universal consent, refrained from rating it; the difficulties attending it are too great, and so the justices would have found them."§

But where it has been *the usage* in a parish, to rate persons to the poor for their stock in trade within the parish,

* *R. v. Justices of Canterbury.*

† 4 Burr. R. 2291.

‡ 4 T. R. 771.

§ Cowp. R. 326.

there can be no doubt but such persons are *liable*, under 43 Eliz. c. 2, to be rated to the poor in respect thereof. *Rex. v. Hill*, *Tr.* 17 Geo. 3.*

Thus, where, upon an Appeal against a poor's rate, the session confirmed the same, and stated, that it had been *usual and customary* from 43 Eliz. "and ever since the existence of rates for the relief of the poor, to rate and assess the inhabitants, for, and in respect of, their personal property or stock in trade," it was insisted, in support of the rate, that an uninterrupted usage and custom of rating this species of property, from the very date of the statute down to the present time, being expressly stated, this question was no longer open to argument.—The order of session confirming the rate, was affirmed.†

Also, in *Rex v. White and others*, *Tr.* 32 Geo. 3. it appeared that a poor's rate for the parish of St. James, in the town and county of Poole, was 1*d.* in the pound on all lands, and 3*d.* for 100*l.* of personalty, and that "it was usual in that parish to rate the inhabitants for their personal property." According to this proportion, one person was rated for his personal property, consisting of stock in trade as a shopkeeper, in the sum of 300*l.* and it was admitted to be rateable.‡

In the same case, White was also rated in the sum of 13,500*l.* for his personal property, which consisted of certain ships or vessels in the Newfoundland trade from the town of Poole, in the said parish; and of monies charged on lands lying out of the parish.—By Lord Kenyon, Ch. J. "In a case in *Bulstrode*, it was said, that the rate should be on persons in respect of visible property, locally situated within the parish. Then applying that rule to this case, I think that the ships are rateable; this parish is their home, and must be so considered for their register. But with regard to the money lent on real securities, I think that it cannot be rated; for it is stated, that the money was lent by persons out of this parish on *landed securities elsewhere*. This, therefore, is not personal property in the parish."—The other Judges concurred.

Money out at interest on mortgage of lands out of the parish.

* *Id.* 613.

† *Cald. Ca.* 147.

‡ 4 *Term R.* 771.

Household furniture.

Another person was, by the same rate, assessed in respect of his household furniture; but the court held "That the same was not rateable to the poor; for it is an expence to the owner, and produces nothing: it is the mean by which he occupies, not by which he gains his livelihood; and a man might as well be rated for the food he eats, or the clothes he wears."

There was also, in the same rate, an assessment upon a person in respect of 1000*l.* principal money *in hand*, but it was determined, that the owner thereof was not rateable. For, by Buller, J. (to which the other Judges assented) "the reason that household furniture is not rateable, namely, because it does not produce any profit, must also govern this;—it is stated, that the owner has it in hard money, and therefore we must take it, upon this state of the case, that it does not produce profit. Besides, money cannot be rateable within this act of Parliament.—For the legislature could not intend, that inquiry should be made as to every guinea which a man has in his pocket. If the rate be confined to visible property, yielding profit to the parish, there will be no difficulty in adhering to that rule; but it will be dangerous in the extreme to extend it further, and to look into every man's bureau to see what money he has there."*

Stock in the public funds.

Stock, or money in the public funds, cannot be rated to the poor rates under the statute of Eliz. nor under any private act, which authorizes the rating of persons in respect of money out at interest.—This was decided in *Rex v. St. John Maddermarket*, *Hil. Ter.* 45 Geo. 3. which was briefly as follows: An appeal was made against an assessment in respect of 1000*l.* stock, or personal property, charged upon the appellant, under a private act of parliament, made, in the 16th year of the reign of Queen Ann, for the maintenance of the poor of Norwich, whereby the church-wardens and overseers of the poor were authorized to assess "the inhabitants, and every parson and vicar, and all occupiers of lands, houses, tenements, tithes, and

* 4 T. R. 771.

all persons having and *using stocks and personal estates*, in the parish of St. John Maddermarket, or *having money out at interest*, in equal proportions." It appeared, that it had been the custom to rate the parishioners for *money out at interest*, as well without, as within, the said city; and it also appeared, that the appellant had not any stock or personal estate in the parish, nor any *money out at interest* in real or personal security, *except only a sum of money then vested in the 5l. per cent. consolidated bank annuities*: the session allowed the Appeal, and on a motion to quash this order of session, the same was affirmed. For by the court, "This is not a local and visible property, within the parish; and nothing is rateable to the poor under 43 Eliz. c. 2. which is not literally rateable; and this private statute of Ann, being made in *pari materid*, ought to receive a similar construction. The words, "*having money out at interest*," must mean not indeed the possession of the money, because it is stated to be *out*, but having a right, at some time or other, at a period longer or shorter, to reclaim the money, which is so outstanding;—by no means a description of money in the public funds, with respect to which, the parties have not the money out at interest, but in lieu thereof have an annuity."*

And, as stock in trade, when its value can be ascertained, is rateable to the poor, if on an Appeal against a rate, because certain persons are not rated for their stock in trade, the session make an order, subject to the opinion of the Court of King's Bench, they must expressly state, whether the property alledged to be in the possession of the parties unrated, belong to them, or not: and if it does, whether it produces profit or not: or whether it is liable, or not, to incumbrances of equal value. If the session omit this, the court cannot give any opinion.†

In a recent case, *Trin. Term. 47 Geo. 3*, the owners of packet boats, employed under a personal contract with the post-master, in carrying the mails, &c. between Holyhead and Dublin, were determined to be liable in respect of the

Vessels continually passing and repassing

* 6 East's R. 182.

† 6 T. R. 53.

profits accruing to them, from the carriage of passengers, and luggage, in such boats, to be rated for the relief of the poor for the parish of Holyhead, where *such owners reside*.—The case was as follows:

Defendants appealed to sessions against a rate made for relief of the poor of Holyhead, by which it appeared, that one "Captain Jones" was rated (for his "*Packet*" 250*l.*) at 6*l.* 5*s.* and three other defendants, captains of packets, were respectively rated each for *his packet* in a similar sum. That the appellants have all their houses at Holyhead, where their families at present reside, in respect of which houses they have been, and are, assessed to the poor rate; each packet-boat costs between 2000*l.* and 3000*l.* respectively, and the commanders thereof are at liberty to dispose of them. The packets are registered in the port of Beaumaris; when hailed at sea, and asked where the packet belongs to, the answer is, "*Holyhead*." The appellants are respectively commissioned by the post-masters general, by an instrument under their hands, and under the common seal of the general post-office. The packet-boats are employed in the service of government to carry the mail, &c. between Holyhead and Dublin, for which the commanders receive annual salaries. By permission of the post-master general, the appellants carry passengers, with their horses, luggage, &c. They make annual profits, which are of a fluctuating nature, but the average is not less than 250*l.* at which they are rated. They pay no custom-house dues, fees, port charges, lights, &c. The appellants are responsible to the post-masters general. The session confirmed the rate, subject, however, to the opinion of the court of B. R.—Lord Ellenborough, C. J. said, "It is objected that they are not permanently *local* property in the parish of Holyhead, and that no profit is made of them there. But the inchoate act, which is to earn the profit, begins there, and therefore there is a part performance within the parish, of that which is to make the profit, by the use of the property in question.—The boats are laid up there; they are repaired there; the owner dwells there: they yield profit there; for the passage money of the voyage

from Dublin is actually earned there: and that of the voyage from Holyhead to Dublin, is at least begun to be earned in the parish of Holyhead. But whatever the question might be, as between Dublin, and Holyhead, in *this* respect, it could only go to the *quantum*, with which we have no concern in this case; it is enough, that this is, what it is contended it ought to be, *local* visible property in the parish; that it yields some profit it cannot be doubted, and the owner resides in the same parish."

A lately decided case, on this subject, seems to anticipate almost every question that *can* be supposed to arise under circumstances of vessels shifting their *local* situations. It was in the 58th Geo. 3. Appeal against a poor-rate, confirmed by session, and special case.

The case, as stated for the opinion of the court of B. R. was very long, and somewhat confused, from the circumstance of it comprising a question of rateability of two vessels, both trading from the port of Wisbech, but under circumstances extremely different. The substance of the facts, out of which the question arose, was as follows. Part of this port is not within any parish, and the remainder of it in several parishes, of which Wisbech is one. One of these two vessels, being large, *never was in any part of the parish of Wisbech*, her cargoes being taken out of her in the river, and carried into that parish by boats. The other vessel, which was smaller, received and delivered her cargoes in the parish of Wisbech. The present claim was made on the proprietor of *both* these vessels lying in the parish of Wisbech, which was actually the home of the smaller vessel; where the cargoes were, one directly, the other indirectly, discharged; the freight paid; where the profits made by *both* of them were invariably received; and the local ability of the owner to contribute produced; and the question was how far either, or both of them, were visible property in that parish. The smaller vessel also happened not to be within the parish at the time the rate was made.

Proprietor of a ship never locally within the parish cannot be rated for her; but otherwise if it be the home of the vessel, though not there at the time of the rate being made.

The court were so clearly of opinion that the large vessel, never having been within the parish of Wisbech, could not

be considered as visible property there, that the question, so far as concerned *it*, was given up in argument; and respecting the smaller vessel, Lord Ellenborough, C. J. said, "As to the smaller vessel being out of the parish at the time the rate was made, if such strictness were required, a ship could seldom be made the subject of a rate. But it has been frequently determined, that they are rateable. It is sufficient, that the parish, in which the ship is rated, is the domicile of the vessel, and that the profits derived from it contribute to the ability of the occupier within the parish."

Bailey, J. said, "It has been observed, that the ship might possibly be lost at the moment the rate upon her was made; but, if it were even so, the rate was made in respect of by-gone profits, already earned, and therefore the actual loss of her would not interfere with the right of the parish to receive a rate upon profits antecedently received."

The other Judges concurred. Rate confirmed.*

Tolls of a ferry rated between two local stations, in neither of which the owner is resident.

In a case of *Rex v. Nicholson*, *East. Term*, 50 Geo. 3. one John Nicholson had appealed against a rate made for the parish of Monk-Wearmouth in Durham, on the tolls of an ancient ferry, of which he was lessee, between Monk-Wearmouth and Sunderland, but in neither of which places he was resident. The judgment pronounced by Lord Ellenborough, C. J. sufficiently indicates the points of the case, and illustrates the doctrine contended for. It was in substance, as follows: "The rate is here imposed on the *tolls merely*.—Tolls do not by themselves come under any of the descriptions of occupancy in the statute. If, therefore, the present proprietor be rateable at all, it must be as an *inhabitant*. But to support a rate of *personal property*, *actual residence* has always been considered to be necessary to constitute inhabitancy. In all cases, where tolls have been held liable to be rated, they have been arising out of the use of a canal, or other local and visible property, part of the land itself; but there is no case where tolls have been held liable *per se*; and if even liable as per-

* *R. v. Shepherd and another*, MSS.

sonal property, they could not be rated upon the present appellant who is not an inhabitant."*

On the subject of *pure locality*, unmixed with any other consideration, (in order to ascertain the place or places of rating, where several appear to be in some degree contributory to the subject of the profit, on which the rate, if any, must be founded) we must refer to two cases, before adduced for another purpose, respecting rating.†

R. v. New River Company. Appeal against a rate on the said Company of 15*l.* per annum in a certain parish of for *land covered with water* in said parish in their occupation, the springs of which supplied the New River, in a great degree, and the value of which land, so covered, was estimated at 300*l.* No profit was made of this water till it arrived in London, and the question was, therefore, whether it were wholly in Anwell, or partly there, and partly in London, or wholly in the latter place, where the whole profit was made. The court were clearly of opinion, that, on the face of the rate itself, *the land* appeared the immediate object of the rating: and it was said by Bailey, J., "That the case being so, it was no matter whether the subject of profit (the water issuing out of the land) were conveyed in pipes to London, or carried by carts; that the mistake had been by likening the case to that of tolls, and supposing therefore that the Company were liable to be rated for the whole profits *where* the produce was received."

But in the case where a corporation were in possession of *certain reservoirs for water* under an act of parliament, situate in a particular parish, and conveyed through *several other* parishes to the place where the profit was made, and they had been rated for the *whole of their profits* in that parish where the reservoir was; the court of B. R. quashed the rate, observing, "That though the *reservoirs* are within the legal description of *land*, and of course rateable, where locally situate, *the profit* upon the water distributed at the end of the course of the aqueduct could not be wholly rateable at one place where the reservoir was situate, but in *some proportion or other*, in parishes contributing to that

* 12 E. R. 930.

† *Ante*, p. 632.

profit." *—N. B. The *proportion* is a question for the session only. The *liability* is that which the court of B. R. decided.

Form of the
rate.

But one of the constituent items toward making a good and effectual rate, as it may affect settlements, remains to be briefly noticed; and *that* relates to the mere *form* alone; the title, purposes, publication, and other essential matters of *substance*, respecting the rate itself, having been already considered in explaining the statutes by which they are directed.

If the description of the person, who is liable, be but such as designates him with sufficient *certainty*, and *also notoriety*, as an *inhabitant*, the law appears to be satisfied, as respects settlements. Thus, where the name of the last anterior tenant remained in the books of the *overseers of the poor*, but the present occupier had paid as occupier of the same property, it was held a sufficient rating to confer a settlement. †

But where there were columns for both landlords', and tenants', names in the *land-tax books*, and though the tenant stood in that of occupier, and paid the rate, yet it appeared the landlord was rated in the landlord's column, it was decided not to confer a settlement on the tenant. ‡

The reason why the occupier of a tenement gains a settlement by paying *parochial taxes*, is because the parish, by receiving them at his hands, recognize him for an inhabitant. §

When the respondents to begin, and when the appellant.

Before the subject of Appeals against rates be finally concluded, it may be right to observe, that, where an appellant alledges, that he has no rateable property within the place, the respondents should begin, by showing that he has *some* property liable to be rated, for otherwise it would be obliging the appellant, in the first instance, to prove the negative. But if the appellant only object to the *quantum* of rate, he admits his liability *generally*, and the *onus* of proof to support his appeal lies on *him*, and *he* ought to begin. ||

* 14 E. R. 609.

§ 2 T. R. 628.

† Doug. 564.

|| 4 T. R. 475.—1 Bott. 289.

‡ Id. 225.

Having accomplished the professed purpose of these pages, by the consideration of orders as they respect the settlement, maintenance, and removal, of the poor, with other matters incident thereto, in the utmost extent to which the design of the work will permit, the remaining subjects of *orders*, as they have been placed in contradistinction to *convictions*, claim a brief notice.*

Orders on other subjects, not relating to the poor.

The reason for considering the proceedings under 5 & 6 Edw. 6. for keeping open an alehouse, after an order to suppress it, are said to be, † “that the defendant is guilty of a contempt in disobeying the first order, and that the power of imprisonment in that case is somewhat similar to process of attachment.” It is added, however, that “the necessity of a previous summons (the only reason given, why any distinction has been made between orders, and convictions,) is somewhat inconsistent with that mode of considering it.”

Proceedings under 5 & 6 Edw. 6. relative to keeping open a suppressed alehouse.

With respect to the penal proceedings against a person for assisting in the fraudulent removal of goods, to avoid a distress, under 11 Geo. 2. c. 19. “the language of the act points out a proceeding altogether similar to that which is understood by a summary conviction, and it would be regular *in that form*; but certain it is, that those proceedings have not only been deemed valid in the shape of *orders*, but, upon that ground only, have been allowed to admit of informalities which would have been fatal in convictions.” The only criterion, furnished by the cases, for distinguishing when penal proceedings are to be considered as orders, and when as convictions, is, whether they be *so denominated in the statute?* ‡

Under 11 Geo. 2. relative to fraudulently removing goods.

Among numerous singularities in the provisions of the act of 39 & 40 Geo. 3. c. 99. commonly called “The Pawnbrokers’ Act,” one is, that by § 14. on the complaint of the pawner of any goods to one justice, of certain offences (*therein’ described*) which have been committed by the

Under pawnbrokers’ act, 39 & 40 Geo. 3.

* See *ante*, p. 522, 3.

† Paley, 100.

‡ Cald. Ca. 156. 391.

Order.

pawnbroker, such justice is *required* to CAUSE, (which word is always understood to give authority even to issue a *warrant*, and not merely a *summons*) the pawnbroker to come before him, and after examination, and refusal to give immediate redress to the grievance complained of, to *make an order under his hand* for such redress, and upon refusal immediately to comply with the said order, to *commit the offender to the house of correction, or other public prison, till he shall comply with such order.*

Distress.

By § 20. & 23. certain other offences are described, for which (leaving it to inference whether, after proof, any order is to be made, or conviction to take place) the remedy is directed to be by *warrant of distress* under the hands, &c. of *two justices.*

Conviction.

Several succeeding sections restore the authority of a single justice, even to grant warrants of distress for certain other laches and defaults in the pawnbroker.

Lastly, comes a form of conviction (accompanied by the common directory clause to the sessions, "to hear Appeals from said convictions," without being subject to a *certiorari*), and the following section :

"If any person, *convicted* of any offence *punishable by this act*, shall think himself aggrieved by the judgment of the justice before whom he shall have been *convicted*, he may appeal to the session, and the execution of the judgment shall, in *such case, be suspended*, the person convicted entering into recognizances at the time of *the conviction*, with two sureties in double the sum he shall have been adjudged to pay, &c. &c. And the session shall award such costs as shall appear just, &c.; and, if the judgment shall be affirmed, the appellant shall immediately pay, &c., or in default thereof, shall *suffer the pains and penalties by this act inflicted upon persons respectively*, who shall neglect to pay, or shall not pay, the forfeitures hereby imposed." *

* On the various incongruities, immediately observable in this act, no general observations are called for in this place : but being a statute comprehending a great variety of descriptions of offence, for *some* of which the remedy to the complainant, and the punishment of the

Order of Justices—(Highways).

County of..... } “ We two of his Majesty’s Order for
 (to wit.) } justices of the peace for the said county, widening and
 acting within the hundred of within the said county, diverting by
 13 Geo. 3. c. 78.
 having upon view found that a certain part of the highway
 between and in the [parish, &c.] of
 in the said hundred, for the length of yards, or
 thereabouts, and particularly described in the plan here-
 unto annexed, is for the greatest part thereof narrow, and
 may be conveniently enlarged and widened, by adding
 thereto from the lands and grounds of and
 of the length of yards, or thereabouts, and of the
 breadth of feet, or thereabouts, particularly de-
 scribed in the plan hereunto annexed, which we think will
 be much more commodious to the public; we do hereby
 order, that the said highway be widened and enlarged
 through the lands aforesaid; and that the surveyor of the
 highways for the of where the said old
 highway lies, do forthwith proceed to treat and make
 agreement with the said and for the re-
 compence to be made for the said ground, and for the
 making such ditches and fences as shall be necessary, in
 such manner, with such approbation, and by pursuing such
 measures and directions in all respects as are warranted
 and prescribed by the statute made in the thirteenth year
 of the reign of his Majesty King George the Third, ‘ *For
 the amendment and preservation of the highways:* ’* and in

offender is directed to be by *orders*, and for others by *conviction*, and for
 a third catalogue of them by an instantaneous judgment followed by
 distress and sale; at the same time, it appearing that the legislature has
 specifically given an Appeal from the *convictions*, while they appear to
 have withheld it from the *orders*, rendered the notice that has been
 taken of the statute, at least, not irrelevant in a page dedicated to the
 consideration of orders generally.

* The forms are directed by the statute giving the authority, which
 requires that they “ shall be used on all occasions, with such additions
 and variations *only* as the exigency of the case may require.” Any
 material variation therefrom, will, therefore, be fatal. *Davidson v. Gill*,
 1 E. R. 64.

case such agreement shall be made as aforesaid,* we do order an equal assessment, not exceeding the rate of sixpence in the pound, to be made, levied, and collected, upon all and every the occupiers of lands, tenements, woods, tithes, and hereditaments, in the said (parish, &c.) of and that the money arising thereupon be paid and applied in making such recompense and satisfaction as aforesaid, pursuant to the directions of the said act.

A. B.

C. D."

N. B. If the road is to be turned, then, after the words, "is for the greatest part thereof narrow," say, "and cannot be conveniently enlarged and made commodious for travellers, without *diverting* and turning the same;† and

* The 16th and 18th sections of the statute direct, that "if the surveyor, under this authority, cannot make agreement with the parties, or certificate in writing of the trustees who took the view, on proof of fourteen days' notice in writing having been given to them by such surveyor, or to their agent, trustee, &c. &c. he shall apply to the quarter sessions, who shall impanel a jury to assess damages, not exceeding forty years' purchase, and also reasonable recompense and satisfaction to all parties interested, for the full and entire divestment out of them of the property (minerals and timber excepted). And if such jury shall give more than was offered by the surveyor, the costs of the proceedings to be paid by him; if less, or no more, by the person or body refusing to accept.

† According to the form here directed a new highway must be set out before an old one can be stopped up; and it is not sufficient that another old highway was *widened* in parts to answer the purpose of a new road. And if a new highway be not set out before the old one be stopped up, the legality of the orders of the justices for diverting the old road not stopped up may be questioned in an action of trespass, notwithstanding such orders were confirmed by the sessions on appeal, stating the fact of a new road being set out instead of the old one. *Welsh v. Nash*, 8 East's Rep. 394.

"For," said Lawrence, J. "the justices could not give themselves jurisdiction by finding that as a fact, which was not so."

By sect. 19. of the statute 13 Geo. 3. it is enacted, that, where any such highway, bridle way, or foot way herein last-before described shall be so ordered to be stopped up or enclosed, and such new highway, bridle way, or foot way, set out and appropriated in lieu thereof as aforesaid, it shall be lawful for *any person injured or aggrieved* by any such order or proceeding, or by the enclosure of any highway by virtue

having viewed a course proposed for the said new highway through the lands and grounds, &c." And afterwards, in-

of an inquisition taken upon a writ of *ad quod damnum*, to appeal to the next general quarter session after such order made and proceeding had, on giving ten days' notice in writing to the surveyor and party interested in such enclosure, if there be sufficient time for that purpose; if not, then to the next session after upon the like notice. And if no such appeal be made, or, being made, such order and proceedings shall be confirmed, the new way shall be and continue a public highway, bridle way, or foot way, to all intents and purposes, and the soil thereof sold in the manner and subject to the restrictions herein-before mentioned with respect to highways to be enlarged or diverted.

There is scarcely a passage in this section which has not given occasion to controversy. The following instances are very important:—In two cases, where an Order of Justices had been made for stopping up a road, it was held, that the appeal must be made to the quarter session next after the order made, without reference to any personal notice received by the appellant of such order; although the court admitted that it might be a great grievance and hardship where the interests of parties are thus invaded behind their backs, and might be a good ground to apply to parliament for a revision of the clause of appeal. *Rex v. Justices of Pembrokeshire*, Hil. 42 Geo. 3. 2 East's Rep. 212. and *Rex v. Justices of Staffordshire*, Mic. 43 Geo. 3. 3 East's Rep. 151. —*R. v. Justices of Bucks*, M. 54 Geo. 3. Rule for a *mandamus* to the defendants to enter continuances to the next quarter session for Bucks, upon the appeal of J. B. and T. S. against an enclosure, by virtue of an inquisition taken upon a writ of *ad quod damnum*, of a certain road therein described. It appeared by the affidavits that the inquisition was taken at Wycomb on the 11th of November, 1812, but no enclosure or stoppage of the road took place till June, 1813, when a gate was put across it, and a board put up dated the 20th of the preceding April, giving notice that, by virtue of a writ *ad quod damnum* and inquiry before the sheriffs and a jury, the road in question was stopped. On the 2d of July the appellants gave notice of their intention to appeal to the said session, and their appeal accordingly came on at the Midsummer session, but the justices dismissed it as being out of time.

The doubt in this case arose on the construction of the words of the statute 13 Geo. 3. c. 78. § 19. which are that "It shall be lawful for any person injured or aggrieved by any such order or proceeding (order of justices); or by the enclosure of any highway by virtue of an inquisition taken upon a writ of *ad quod damnum*; to appeal to the next general quarter session, after such order made and proceeding had, on giving ten days' notice in writing to the surveyor, &c."

Lord Ellenborough, C. J., said, "the words of the act were not quite

stead of the words, "be widened and enlarged," say, "be diverted and turned."

clear of inconsistency, but nevertheless *proceeding* must be understood to refer to *legal proceeding*, and not *an act done*. In general where *an act done* is meant, the statute so expresses it, by the words '*proceeding, or act done*.' The words here are 'any person injured or aggrieved by any such order, or proceeding, and nothing having been then mentioned for those words to refer to but *the order of justices, order or proceeding* is tantamount to *order of justices*, and *such proceeding connected with it* as makes part of the judicial proceeding.'

The statute then goes on to say, "or by the inclosure of any road, &c. by virtue of an inquisition taken upon a writ of *ad quod damnum*." Now the order to inclose under the inquisition is of itself a grievance, before the inclosure be actually made. Then, "it shall be lawful to make complaint by Appeal to the justices at the next quarter session after such order made, or proceeding had." Here the words embrace the whole subject matter of the Appeal. The Appeal may be to the next session after the order, viz. order of justices, or proceeding, viz. proceedings under the inquisition. The next words, "if no such Appeal be made, such order and proceedings shall be confirmed, the said inclosures may be made, and the ways stopped," show that the Appeal was to precede the inclosure or stoppage. If there be no Appeal till the inclosure, the party must make a new highway before it can be determined, whether he be at liberty to stop the old one. *Proceeding*, therefore, cannot mean *proceeding to stop up*, but the *proceeding upon the inquisition*. It seems, therefore, that the Appeal must be made at the quarter session next after the execution of the inquisition.

Le Blanc, J., said, "the difficulty in the case arose from the two words '*inclosure*,' and '*proceeding*.'"

The writ of *ad quod damnum* is the ancient one. The statute of 8 & 9 Wm. 3. c. 16. (repealed, but many of the expressions borrowed in the subsequent statute of 13 Geo. 3. c. 78.) used the term "*inclosure*," in the sense of "*directed to be inclosed*," and enacted, that where any highway should be inclosed after a writ of *ad quod damnum* and inquisition thereon, it should be lawful for any person aggrieved by such inclosure to make their complaint, &c. by which it is clear, the statute meant persons aggrieved by the order for inclosure in pursuance of the inquisition, &c. Then it enacted, that the sessions should hear and determine, and their determination should be final; and if there should be no Appeal, the inquisition and return entered and recorded by the clerk of the peace at the session should be binding on all persons.

Then came the statute 13 Geo. 3. which authorizes two justices at special sessions to do that by their order in a more summary manner,

Certificate from the said Justices to the Court of Quarter Session.

"To the justices of the peace at their general quarter-session, to be held at in the said county, the day of 18...

which before was done by inquisition on a writ of *ad quod damnum*; and, as to the Appeal, it enacts, that "it shall be lawful for any person aggrieved by such order or proceeding (which means an Order of Justices,) or by the inclosure of any road by virtue of any inquisition (borrowing the very expression of 8 & 9 Wm. 3.) to make his complaint by Appeal at the next session *after order made, or proceeding had. "Such order or proceeding."* Here proceeding must be understood analogous to order, that is, a legal or judicial proceeding, and not an inclosure made in execution of such proceeding. Then, if no Appeal should be made, or being made, such order and proceedings be continued, the said inclosure may be made, and the proceedings thereon shall be final. It is manifest, therefore, that this statute, as well as that of Wm. 3. contemplated the Appeal being made *before* the inclosure. If a contrary construction were given, it would follow, that an Order of Justices, if there were no Appeal at the next session, would be final; but under similar circumstances the more notorious process by inquisition would not be final, and the party aggrieved could not appeal till the new highway was set out and completed, and the inclosure of the old one made. The inquisition entered and recorded at the session was, therefore, the thing to be appealed against, not the inclosure itself. Rule discharged.—2 M. and S. 230.

R. v. Justices of Herts, H. 55 Geo. 3. Two justices in special session on the 20th June, made an order, by which they order a public footway to be diverted and turned, and upon 4th July following, made another order for the old footway to be stopped up. Appeal against these orders was made at the next Michaelmas quarter session, and not at the Midsummer session, which was holden on the 11th July, *on which account* the justices in session dismissed the Appeal.

Mandamus was moved for to enter continuances and hear the Appeal at the next session. The single question was, whether the Appeal had been made in time, or, in other words, whether the time for appealing was to be reckoned from the date of the *first*, or the *second*, order, according to the words of the statute.

In support of the rule for a *mandamus*, it was contended, that the order for diverting and turning, does not of necessity comprehend a shutting out of the public from, the old way; but they had still a right to go along it till the *second* order was made for shutting it up; and § 19. of 13 Geo. 3. c. 78. gives the Appeal *expressly* where any footway shall be *ordered to be stopped up*, so that the Appeal against the *second* order was, at all events, in good time. And of this opinion was the

"We, the within named A. B. and C. D., do hereby certify to the said court of quarter session, that we made and signed the within order, and that with our approbation, and by our direction, the said surveyor hath treated with the said and for the said lands required for the purpose aforesaid, but was not able to make any agreement for that purpose with them, or either of them; and that he tendered to the said the sum of, and to the said the sum of, as a recompense for the said ground, and for the making the said ditches and fences, which they and each of them refused to receive.

A. B.
C. D."

Order for stopping up the old highway and selling the soil thereof.

"We whose names are subscribed, being the justices of the peace who have viewed the several highways described in the plans hereunto annexed, and made an order for diverting the old highway; and being satisfied that the new

court; for Lord Ellenborough, C. J., said, "the *gravamen* as to the public is the *stopping up*;" and the Appeal must be confined to the latter order.—3 M. and S. 459.

The number of difficulties attending the construction of the different parts of the act 13 Geo. 3. exemplified in the foregoing cases, occasioned a statute to be passed (the 55 Geo. 3. c. 68.) for the amendment of the former one. By this act, *first*, the justices in *special session* are empowered to stop up *unnecessary* highways, and to sell and dispose of the soil (according to the forms of the former act), but instead of applying the money obtained for such soil to the purchase of the soil for new highways, as directed by the former statute, it is to be applied to the general purposes of repair of highways in the parish. *Secondly*, notice (according to a form annexed; *see post, last precedent in this series*) is to be affixed, in legible characters, by the side of the highway directed to be diverted or stopped up; as also to be published in a newspaper usually circulated in the county, and also to be affixed on the church door, for *three successive weeks after the order shall have been made*; which Order shall be confirmed at the quarter sessions *next after four weeks from the first day on which notice shall have been published*. *Thirdly*, that parties aggrieved by such order or proceeding, shall have an Appeal to the said quarter session, giving *ten days' notice in writing* to the surveyor of highways of the parish, &c. and also affixing one on the church door of the same. If no Appeal be so made, or order be confirmed, old ways may be stopped, and the proceedings shall be conclusive.

highway therein described is properly made, and fit for the reception of travellers, do hereby order the said old highway, being of the length of yards, and of the breadth of feet, upon a medium, as appears by the said plan, to be stopped up, and the land and soil thereof so be sold by the said surveyor to whose land adjoins thereto, if he shall be willing to purchase [the same, for the full value thereof: if not, to some other person or persons for the full value thereof, (reserving, nevertheless, to a free passage for persons, horses, cattle, and carriages, through the land and soil of the said old highway to and from the [land, &c.] belonging to him, called according to his ancient usage thereof.”)

Certificate to be written under the Order above mentioned.

“ We the above named justices do certify, that the old highway herein before mentioned and described, was sold by the said surveyor to with our approbation, for the sum of which sum we do order the said to pay to the said surveyor, to be applied in *purchasing the land, and making the said new highway; and if any surplus remains, we do order that the same shall be applied* * for the use of the highways within the said (parish, &c.) of

County of } “ We and esquires,
(to wit.) } two of his Majesty's justices of the peace
for the said county, at a special sessions held at in
the hundred of in the said county, on the
day of 1813, having upon view found that a certain
part of a highway within the of in the said
hundred, lying between and for the length
of yards, or thereabouts, and particularly described
in the plan hereunto annexed, may be diverted and turned
so as to make the same nearer [or, more commodious] to

Order for turning a highway through any person's lands with the owner's consent.

* It should seem, although the 55 Geo. 3. directs *the forms* used to be those of the anterior statute, that these words in *Italics* should be omitted, as the use they order to be made of the money for which the old road sells, receives by the posterior statute a different direction.

the public; and having viewed a course proposed for the new highway in lieu thereof, through the lands and grounds of of the length of yards, or thereabouts, and of the breadth of feet, or thereabouts, particularly described in the plan hereunto annexed, and having received evidence of the consent of the said to the said new highway being made through his lands, herein-before described, in writing under his hand and seal; we do hereby order that the said highway be diverted and turned through the lands aforesaid, and we do order an equal assessment, not exceeding the rate of 6d. in the pound, to be made, levied, and collected, upon all and every the occupiers of lands, tenements, woods, tithes, and hereditaments in the said of and *that the money arising thereupon be paid and applied in making* recompense and satisfaction for the same unto the said*."

Form of such Consent.

"I, A. B., of in the county of being owner of the lands described in the plan hereunto annexed, through which part of a certain highway lying between and is intended to be diverted and turned, in consideration of the sum of to be paid to me for the said land and soil thereof [*or in consideration of the said old highway being sold, exchanged, &c. and to be vested in me, and also of the sum of to be paid to me, as the case may be*], do hereby consent to the making and continuing such new highway through my said lands.

"Given under my hand and seal, this day of...."

Order for determining what repairs shall be done to new roads by persons who are discharged from the repair of old ones.

County of } "We, two of his Majesty's
(to wit.) } justices of the peace for the said county, acting within the (*hundred*) of in the said county, having (at the request of the parties interested in part of the highway [*or turnpike road*] hereafter mentioned, who could not agree about the repair thereof) viewed a certain part of the highway (*or turnpike road*), described in the plan hereunto annexed, of the length of yards, which hath

* See the last preceding note.

been set out and appropriated for a new highway (or *turnpike road*) between and in lieu of an old highway (or *turnpike road*), which hath been ordered to be stopped up; and having also viewed the ground where the said old highway was situated, and having summoned the surveyor of the said new highway (or *turnpike road*), and also A. B., (*who was liable by tenure, &c.*) (*If the said old road lay in a different parish, and was to be repaired by the inhabitants, leave out the words in Italic, and insert the surveyor of the (parish, &c.) of where the said old road lay, who were liable*) to the repair of the said old highway (or *turnpike road*), to appear before us this day; and having heard what has been alleged touching the repairs of the said part of the said highway (or *turnpike road*), and having fully considered the same, and all the circumstances of the case, we think it just and reasonable, and do hereby order and (*adjudge*) that the said A. B. (or *the inhabitants of the said parish, &c.*) shall from time to time repair,* and keep in repair, the whole (or a part of the said highway), from to containing yards in length, at each end whereof we have caused a post, or stone, to be placed, to ascertain the extent thereof.

“ Given under our hands and seals, this . . . day of . . . ”

Form of Notice of turning, diverting, or stopping up (as the case may be) a Highway, as directed by 55 Geo. 3. c. 68.

“ Notice is hereby given, that on the day of last, an order was signed by J. W. and T. H., two of his Majesty’s justices of the peace in and for the county of for [*if the order be for turning, diverting, and stopping up, &c. here so state it, and describe the road ordered to be turned, diverted, and stopped up; if the Order be for stopping up a useless road, here so state it, and describe the road ordered to be stopped up;*] and that the said

* All persons liable to the repairs of any such old highways, &c. so diverted, or to be diverted, shall continue liable to the repair of such new highways, &c. except where any agreement shall have been made relative to such repairs, between the parties interested therein, which hath laid the burthen thereof upon any other persons. § 19.

order will be lodged with the clerk of the peace for the said county, at the general quarter sessions of the peace to be holden at . . . in and for the said county, on the . . . day of . . . next, and also that the said order will at the said quarter sessions be confirmed and enrolled, unless upon an appeal against the same to be then made, it be otherwise determined."

Order of Justices—(Removal of Paupers).

County of . . . } To the churchwardens and overseen
(to wit.) } of the poor of the parish of M.* in the
said county of B. and to the church-wardens and overseen

* In the *K. v. Ulverstone*, Ea. Ter. 38 Geo. 3, the order of removal being directed "to the church-wardens and overseers of the poor of the parish, township, or division of *Ulverstone*, &c. one of the counsel asked the opinion of the court, whether such a description was proper; and Lord Kenyon, C. J. answered, that as then advised, he saw no objection. 7 T. R. 565.

By 35 Geo. 3. c. 101. A power is given to two justices to suspend the foregoing order of removal, the parish to which the removal is made, paying the expences of such suspension and its consequences, which are to be levied by distress and sale of the goods of the church-wardens or overseers refusing to pay for the Orders and *not giving notice of Appeal during that time again*: the order.

If the costs exceed 20*l.* by sect. 2. of this statute, an Appeal is given against *that* particular Order.

Two modern cases are particularly explanatory of the meaning of this statute, as it respects Appeals against Orders of Justices. In one of *R. v. Bradford*, in 48 Geo. 3, Lord Ellenborough, C. J. said, "the meaning of the statute is this; if the party aggrieved by the Order, and intending to appeal against the amount of the charges, will give notice of the appeal within three days after demand made, he shall be relieved from the inconvenience of a distress; but though he neglect to do so, he only subjects himself to that inconvenience; for his right of appeal, which is afterwards given, is not thereby taken away; and if he afterwards think proper to appeal within the time appointed by law for Appeals against Orders of removal, he is expressly empowered to do so." Order of session confirmed. 9 E. R. 97.

The other was still more recent, and was *R. v. St. Mary-le-Bone*. Order had been made by two justices for removal of a pauper, and the execution suspended. By another Order three months after, reciting the death of pauper, and stating that it had been proved that the reasonable expenses incurred by the suspension were five pounds and upwards, it directed those charges to be paid on demand in pursuance of the statute.

of the poor of the parish of R., in the county of G., and to each and every of them.

Upon the complaint of the church-wardens and overseers of the poor of the parish of M. aforesaid, in the said county of B., unto us whose names and seals are hereunto affixed, being two of his majesty's justices of the peace in and for the said county of B., and one of us of the quorum, that R. P. and A. his wife, B. P. their son aged five years, and E. P. their daughter aged four years, have come to inhabit in the said parish of M. not having gained a legal settlement there, and that the said R. P., A. his wife, and B. and E. their children, are become chargeable to the said parish of M., we the said justices, upon due proof made thereof, as well upon the examination of the said R. P. upon oath, or otherwise, and likewise upon due consideration had of the premises, do adjudge the same to be true; and we do likewise adjudge, that the lawful settlement of them the said R. P., A. his wife, and B. and E. their children, is in the parish of R. in the county of G.; we do therefore require you the said church-wardens and overseers of the poor of the said parish of M. or some or one of you, to convey the said R. P., A. his wife, and B. and E. their children, from and out of your said parish of M. to the said parish of R.; and them to deliver to the church-wardens and overseers of the poor there, or to some or one of them, together with this

Appeal as well against the order of removal as against the order for payment of charges; and both dismissed by sessions, and case made for B. R.—Lord Ellenborough, C. J. "The appeal is by the first statute of William, giving to the party *aggrieved* by the determination of the Justices respecting the settlement of the pauper, then, though the grievance grow by a subsequent statute, the party is still *aggrieved* by the Order of removal. Before the statute 35 Geo. 3, there was no grievance to the parish to which the Order of removal was made, until it was executed; but that statute attaches a contingent consequence to the Order itself in this case, which, coupled, as it is, with the Order of payment of costs, makes it a *grievance*, though the pauper died before a removal took place. Then the Appeal against the Order for costs is not against the quantum, but against the liability of the parish to pay any costs at all, taking it as a consequence of the Order of removal appealed against." Order of sessions quashed. 18 E. R. 51.

our Order, or a true copy thereof, at the same time shewing to them the original; and we do also require you the said church-wardens and overseers of the poor of the said parish of R. to receive and provide for them as inhabitants of your parish.—Given under our hands and seals the day of in the year of the reign of his said Majesty King George." *

Order of Justices—(Seizure of Goods, &c).

Order of
justices to seize
the goods and
recover the
rents of persons
who run away
and leave their
families
chargeable to
a parish.

County of } " To the church-wardens and over-
(to wit.) } seers of the poor of the parish of
in the said county of

" Whereas C. W. and F. W. churchwardens, and F. O. and S. O. overseers of the poor of the said parish of have made complaint unto us W. D. and D. W. esquires, two of his Majesty's justices of the peace in and for the said county of that D. O. late of the said parish of yeoman, hath run away from his place of abode, at in the parish aforesaid, into some other county or place unknown, leaving O. his wife, and M. O. and R. O. his infant children upon the charge of the parish of afore-

* "*All persons* who think themselves aggrieved by any such judgment of the said two justices, may appeal to the justices of the peace of the said county, at their next quarter sessions, who shall do them justice according to the merits of their cause." 13 and 14 C. 2. c. 12. § 2. And it has been decided, that under the term *all persons*, the pauper himself is comprehended. Bott. 716.

By 3 and 4 W. and M. c. 11. § 10, which orders the church-wardens and overseers to receive paupers removed by Orders of two justices, it is provided, "That all such persons who think themselves aggrieved with any such judgment of the said two justices, may appeal to the next general quarter sessions of the peace to be held for the county, riding, city, town-corporate or liberty, from which the said person was so removed."

And by the 8 and 9 W. c. 30, "The appeal against any order of removal of any poor person shall be had, prosecuted and determined, at the general or quarter sessions of the peace for the county, division, or riding, wherein the parish, township, or place from whence such poor person shall be removed doth lie, and not elsewhere." § 6.

said, being the place of their last legal settlement; and that he the said D. O. hath an estate consisting of ten acres of land [*or as the case is*] situate at which should ease the said parish of their said charge. And whereas we the said justices have duly examined into the cause and circumstances of the said complaint, as well upon oath as otherwise, and it doth appear unto us, and we do adjudge, that the said complaint is true. These are therefore to authorize you the said church-wardens and overseers of the poor of the parish of aforesaid, to take and seize so much of the goods and chattels, and to receive so much of the annual rents and profits of the lands and tenements of him the said D. O. situate at aforesaid, as shall amount to, or be sufficient to raise or pay the sum of * which we do hereby order and direct you to receive for and towards the discharge of the said parish, for the providing for and bringing up of his said wife and children; and you are hereby required to attend at the next quarter sessions of the peace to be holden for the said county of in order that this order may be then and there confirmed according to the statute in that behalf made and provided. † Given under our hands and seals this day of”

* In a case of *Stable v. Dickson*, 45 Geo. 3, where the justices had adopted a precedent to seize and receive the rents and profits of *the lands indefinitely*. The court held the precedent to be bad, and that the order ought only to extend to a specific sum of money; otherwise, under such a warrant, if a man had 5000*l.* a year, they might seize the whole when the actual burden was not 5*l.*; and Lord Ellenborough expressly said, that the Order must specify a definite sum. 6 East's Rep. 163. 2 Smith's Rep. 278.

† By 5 Geo. 1. c. 8, it shall be lawful for the church-wardens or overseers, where any wife or children shall be so left, by warrant or order from any two justices, to seize so much of the goods, and receive so much of the annual rents and profits of the lands, of such husband, father or mother, as such justices shall direct, for the discharge of the parish for the providing for such wife, child, or children: which *Order being confirmed* at the next quarter sessions, it shall be lawful for the justices there to make an Order for the churchwardens or overseers to *dispose of* such goods and chattels by sale, or otherwise so much of them, for the purposes aforesaid, as *the court shall think fit*; and to receive the rents and profits, or so much of them as shall be ordered by the

Convictions.

We are now to proceed to the consideration of *convictions*, and Appeals from *them* exclusively. A conviction, then, (in the sense in which we are here using the term, viz. a summary conviction before one, or more, justice, or justices; magistrate, or magistrates; commissioner, or commissioners; &c.) * is a record of the proceedings, under the authority of a penal statute, before some person, or persons, duly authorized by it to receive information, and (in some cases, on a view of the offence) to proceed to judgment.

This authority, therefore, being special, and in restraint of the common law, it must appear, on the face of the proceedings to have been strictly pursued, according to the letter of the act by which it was created, that the justice has jurisdiction in the case; and that rules similar to those adopted by the common law, in criminal prosecutions, and founded in natural justice, have been observed; unless the statute (as is the case in some instances) does expressly dispense with the form of stating them.

And it is reasonable, that these convictions should be construed with strictness, because they must be taken to be true against the defendant.

But, although the superior courts of justice are strict, in requiring a *precise specification* of the offence, so as to give the magistrate jurisdiction; yet, if the other proceedings are stated with a reasonable degree of accuracy, the court

sessions, of his or her lands and tenements for the purposes aforesaid.
§ 1.

‘And the churchwardens and overseers shall be accountable at the quarter sessions for all money they receive by virtue of this act.’ § 2.

It appears, therefore, that the first seizure by the overseers authorised by the statute is only to prevent waste, or sale, by the pauper or his family, and that the subsequent application to the session, without the confirmation of which nothing more can be done, amounts in effect to a review of the whole matter, in the nature of an Appeal on behalf of the defendant.

* The appellation “*justice*” is usually applied to persons in the commission of the peace for counties, &c.; “*magistrate*” to persons exercising similar authority under charter, as in cities, boroughs, &c. Some modern statutes, relative to the revenue, give power, in some respects similar, to commissioners of the public boards.

will not be astute in discovering defects in such convictions.

Therefore, in whatever light they may have *formerly* been viewed, it is obvious, *now*, that the public derive considerable advantage from the exercise of the powers delegated to justices of peace, and they have, of late years, received every support from the courts of law, which can be given consistently with the immoveable principles of certainty with respect to the necessary description of the offence according to *certain defined rules*; for, as was said in a very recent case, "*no intendment can be made in favour of a conviction, so as to get rid of an objection in point of form.*" *

In these convictions it is necessary that there should be, *First*, an information, or charge against the defendant.

Secondly, a summons, or notice of such information, in order that he may make his defence.

Thirdly, his appearance, or non-appearance.

Fourthly, his confession, or defence.

Fifthly, the evidence against him, in the event that he do not confess; and,

Sixthly, the judgment, or adjudication.

And, in general, all these matters must be particularly set forth in the record of the conviction.

For the case, indeed, of the magistrates, the legislature has, in many instances, dispensed with this precise statement, which the law generally requires; by prescribing, in some cases, a concise form for the drawing up of the conviction.

And where an act of parliament directs, that all convictions shall be made out in the form, *or to the effect following* (giving a particular form): a conviction, containing all the substantial parts of the form prescribed will be good, although it be not in the express words thereof, or may contain something more than is directed; but more on this part of the subject hereafter.

* R. v. Daman, 1 Chit. R. 155.

Information.

First, then, respecting the **INFORMATION**, which must be the commencement of every proceeding which is not directed to be merely on the view of the offence by a justice. It must contain four constituent positions, correctly stated; viz. the *time when* taken, the *place where* taken, the *authority before which* taken, and the *charge* preferred.

The information should contain the day when it was taken, that it may appear to have been given within the time limited by the statute. *

Time when.

And if the time, so limited by the statute, be *within one* or more *months*, or the like, without expressing that they shall be calendar ones, the limitation must be computed according to *lunar months* of twenty-eight days each; and not according to the calendar months in our almanacs. Therefore, if the statute limit a prosecution to *twelve months*, in the plural number, such prosecution must be commenced within forty-eight weeks, and not afterwards; but if it expresses *a twelvemonth*, in the singular number, this is to be intended a whole year, it being generally understood that, by the space of time, called thus in the singular number, "a twelvemonth," is meant a whole calendar year. And when the computation is to be made from an act done, the day, when such act was done, is always *inclusive*. †

Place where.

The place where the *judgment* is given, or in other words, where the *conviction* takes place, it is on all hands agreed, must be stated with sufficient precision, to show that the power exercised was only commensurate with the jurisdiction claimed. But some difference of opinion prevails respecting the necessity for stating, *when* the *information* was received, so that the place where the *conviction* took place do but appear with sufficient certainty. ‡ Some difference also appears respecting the necessity of naming the

* 1 Ld. Raym. 509. 582.—2 Black. Com. 141.—*Lacon v. Hooper*, 6 T. R. 224.

† *R. v. Adderley*, Doug. 446.—*Castle v. Burdison*, 3 T. R. 623.

‡ See *Boscaw. 25.* and *Nares, 4.*

county in the body of the conviction, as well as in the margin, in which latter place it always stands.* But it does appear to be sufficient if the county be in the margin, and the reference to it in the body of the conviction be clear and precise, and without ambiguity.† It is, on all hands, however, agreed, and the common sense of the thing shows, that it is better to name the county in the body of the conviction, in order to avoid all possibility of indistinctness and cavil; as it has become an axiom in law respecting convictions, that the subsequent evidence, on the hearing, cannot supply any defect in the previous charge in the information; and, as the latter is the foundation, on which all the secondary steps must be erected, precision in the description of locality becomes of primary importance in the information. If the statute, on which the prosecution be founded, be a local one, like those for regulating the sale of hay, and coals, within the bills of mortality, or the building act, or that for the improvement of the streets of the metropolis, the place *where* the fact charged was committed is, in importance, at least the second ingredient in constituting the alleged offence.

The name and style of the justice, or other person claiming authority to hear and determine, before whom the information was made, must be set forth, in order to shew that he has that authority he claims; not only that he has been appointed for the purpose, but that he has acted within his jurisdiction. It is therefore *ex. gr.* not sufficient to style a man "justice, &c. *within* the county," but he must be stated to be such justice, &c. "*in, and for, the county.*"‡ When a statute, moreover, gives cognizance of an offence to the *next justice*, it is not sufficient to name him merely a justice, even *in, and for, the county*, none but the next (*accessible and obtainable at least*) justice can have jurisdiction under those words;§ but if the statute say, "justices *in, or near, the place,*" it is only directory, and

* Boscow. 25.

† 2 Salk. 473.

‡ Nares, 7.—Paley, 63.

§ Dalt. c. 6.—Doug. 66.

any justices of the county, or division, &c., it should seem, may act.*

The charge.

The charge should always be reduced to writing. Some of the statutes require it so to be, *in totidem verbis*; others leave it wholly unnoticed, or only to be collected by inference; and a distinction has been taken between those instances in which the first proceeding is simply a *complaint*, and those wherein it is styled an *information*. There seems, on examination, to be little foundation in principle for this discrimination. This proceeding is altogether admitted to be in derogation of the common law, and the information, and conviction, to stand in lieu of an indictment, and verdict: it should seem therefore, that, on principle at least, the information should be assimilated, as much as possible, to the indictment in all points, the first of which is being reduced to writing. It seems in *all cases reasonable*

Names.

also that the informer's name should appear; whenever any part of the penalty is given to him by statute, it is indispensable; because in those instances, upon the common principles of evidence, such interested informer is rendered incompetent to be a witness,† therefore the conviction must be supported on other testimony. The names of *each*, and *every*, of the defendants ought also to be inserted, and none of them under any general title or description, as *ex. gr. A. B. and company*. This has been decided beyond controversy on the plainest principle:‡ And it seems no exception to this rule, that one of the defendants is a woman, and a *fême covert*; for it has been determined, even in a case where a previous contract (which it was observed a *fême covert* could not enter into without her husband) partly constituted the very nature of the

* R. v. Stephen, Cald. 302. It may, however, be worth consideration (especially if the defendant, after hearing, be acquitted) how far it may be justifiable to drag a defendant, capriciously, and without good cause, before a magistrate living at a great distance, though within the county, when there are others accessible residing, according to the words of the act, *near*.

† Lord Raym. 1545.—3 Burr. R. 1473.

‡ R. v. Harrison and Co. 8 T. R. 508.

offence, that "it was not necessary to join the husband, and that in every crime which a *fême covert* can commit alone, it is sufficient to charge *her* in a conviction."*

It is necessary, on the subject of *names*, to observe something with respect to another party comprehended in *some* informations, viz. where the penalty of the offence is a pecuniary one, and given to the owner of property injured. There are numerous instances of this kind in the statutes for the protection of plantations, gardens, fish-ponds, &c. Two cases on this subject are so recent, and so decisive, as to render the mention of any other superfluous; and though the point under consideration, in the last of them, at least, is only inferentially deducible from it, and though the case itself is alluded to in this volume, on several occasions, for the illustration of other matters involved in it, it is so decisive of that under review, that it is unnecessary to urge the subject further.†

The essential requisite in charging an offence, is, that it contain a *direct* charge, and not facts from which the charge of an offence is to be inferred, however plainly;‡ and, in express terms, every ingredient that goes to constitute the crime described by the statute itself. Thus, if *knowledge*, or consciousness in the offender, be made to constitute a part of the guilt of the transaction, such knowledge, or consciousness, must be directly averred, and nothing less will serve; so if the day, or hour, *at which* the act be done, as under some of the game laws; or the place in which it be committed, as in the acts for the preservation of fish; or the age of any party mentioned in the conviction, as in the coach regulation act; the same precision in averment is necessary; for no intendment can be admitted, in order to help out a description defective in an essential ingredient.§ And if the oath of the informant be requisite

* R. v. Crofts, 2 Str. 1120.

† R. v. Corden, 2 Burr. 2279.—R. v. Daman, 2 Barn. and Ald. 378.

—See *post*, precedent of the conviction in this very case, and the notes thereon.

‡ R. v. Bradley, 10 Mod. 155.

§ 2 Lord Raym. 791.—R. v. Trelawney, 1 T. R. 122.

by the terms of the statute, it must appear on the face of the information to have been given under that solemnity.*

To be varied
from the pre-
cise words of
the statute.

Although the description of the offence must be such as to bring it clearly within the words of the act, which declares it, or punishes it, many cases might be cited to shew that a mere compliance with the *terms* is not always sufficient, for, as was said by a very learned judge upon one occasion, "if a magistrate merely state the fact of the offence in the words of the act, as if it were the legal effect of the evidence, when the evidence itself do not warrant the conclusion, he subjects himself to a criminal information."† Thus on the 5th of Ann. c. 14. it has been holden that a conviction for "*keeping a gun*, alleged to be an *instrument for destroying game*, is bad; for though the act prohibit the keeping or using *any engine* to kill or destroy game, yet as a gun is not specifically named as one of the forbidden engines, and as a gun is an instrument which may as probably be lawfully kept for other purposes, as for that of destroying the game, it is not sufficient so to alledge the fact, though according to the *words* of the statute;‡ but a conviction for *keeping a lurcher* to destroy the game under the same statute, was held good, for not only is a lurcher specifically *by name* forbidden, but the prohibition is in the disjunctive *keep, or use*, so that the description of the offence was both conformable with the *terms*, and the *spirit*, of the statute.§ The presumption, indeed, admissible in favour of a defendant, in consequence of the too loose description of the offence in the conviction, as in the case of keeping a gun above mentioned, may be qualified and corrected, though not extended, by the evidence; as if it be added, "and he, the witness, then and there saw the said defendant fire the said gun (at a hare, or other game,) or saw him beating the covers with an apparent intention of destroying the game, &c." ||

* Boscaw, 16. † Le Blanc, J.—R. v. Thomson, 2 T. R. 15.

‡ Avery v. Hoole, Cowp. 825.

§ R. v. Pearce, 9 E. R. 358.

|| R. v. Davies, 6 T. R. 177.

Upon the same principle as governed these last mentioned determinations, it seems, the particular circumstances of the acts, which are supposed to conduct the opinion of the convicting magistrate to his judgment of their illegality, must be set forth, and not the mere legal result of, or conclusion from, them. This observation extends to a very extensive range of cases, as *profane swearing*, which offence consists in uttering particular expressions; to *gaming*, which consists in particular acts, done after a particular manner; to *robbery*, consisting in certain statutable descriptions of particular articles growing in, or annexed to, the freehold; to *frauds*, accomplished by certain specified means; and to various other instances. In short, as was observed by Buller, J. in one case,* “where the legislature has spoken in general terms, and where a particular offence is intended to be included under the general description, it is necessary, in a conviction, to set forth the particular act done by the party offending, in order to shew that such act comes within the general description, and therefore to enable such defendant to meet the charge.”

Facts themselves to be charged, not the result of them.

In all cases, however, where the nature of the offence consists of a simple fact, and the *place*, *time*, or *manner*, of committing the act, do not contribute to its guilt, it will be enough, if the offence in the conviction be described in the words of the statute, declaring, describing, or punishing, it.

But this mode of interpreting the language of statutes is sometimes delusive. The statute of 5 Geo. 3. for the protection of private fisheries makes no mention of the dissent of the owner being an ingredient in the offence; yet it is obvious, on a little consideration, that, if the act be not done after that *manner*, or in other words, if the owner's consent be previously obtained, it can be no injury to the party, for whose interest and protection the statute was enacted. The same reasoning might be extended to many other statutes, giving summary convictions for injuries to private property. In these cases the want of consent in

* R. v. James, Cald. Ca. 458.

the owner, makes, by necessary implication, a principal feature in the charge, and therefore must be stated in the information. This doctrine has long been established: * but in a very recent case, before cited for the establishment of another principle in convictions, the interpretation of this statute has been carried much farther, and it has been holden not only necessary to be stated in the information, that the act was committed *without the consent* of the owner, but it must appear expressly on the information, and be supported by the evidence, that the prosecution is *carried on at the instance, and on behalf of*, such owner. †

Exceptions,
and exemp-
tions; the dif-
ference be-
tween them.

The last point in the *charge* to be considered is, (under many of the statutes giving summary convictions,) one of the most important, one which requires considerable discriminating power, and one which has given occasion to more appeals than most others. It arises out of the necessity, imposed by the respective statutes themselves, of negating expressly and directly every *exception*, which may accompany the description of the offence in their *acting clauses*; and in distinguishing *exceptions* so made, from *exemptions* introduced by *separate provisions*. It has been too frequently determined, and is *now* too precisely settled, that the *former* are all that it is necessary to negative by averment in the conviction, and that the *latter* are to be taken advantage of, and exhibited in extenuation or exemption by the defendant, if noticed at all, to insist on the distinction here much at length. ‡ The *absence* of them does not form any constituent part of the offence charged, but the *existence* of them does in many cases form the defence of the person accused. § The shortest, and therefore the clearest, elucidation of the *former* part of this doctrine, perhaps, arises out of the qualification act of Car. 2. respecting game, in convictions, on which, the qualifications (being by exception in the section imposing the penalty,)

* R. v. Millison, 2 Burr. R. 679.—R. v. Corden, 4 Burr. R. 2279.

† R. v. Daman, 1 Chit. R. 147. and 2 Barn. & Ald. 378.

‡ 2 Hawk. 25.—R. v. Jukes, 8 T. R. 542.

§ R. v. Jarvis, 1 E. R. 647. n.—R. v. Ford, 1 Str. 555.

must be individually negatived in the charge, on the face of the conviction, and cannot be supplied by the evidence : Of the *latter* part, out of the act of 50 Geo. 3. for regulating stage coaches, in the early sections of which there are numerous offences declared, including numerous exceptions, all of which, upon the principle just insisted on, must be negatived in any conviction under this statute ; * but by the subsequent sections there are some exemptions from the penalties *to be claimed by the defendant* under certain circumstances, which therefore need not be noticed in the conviction. The same may be said of a conviction for retailing spirits without a licence, without averring that it was *not sold to be used in medicine*, a claim of exemption from the penalty allowed by a distinct provision of the statute. † And it is immaterial whether the exemptions be in the same statute which enacts the penalties, or in a subsequent statute bearing reference to the anterior one. ‡

Such is the general outline of the difference between *exceptions*, and *exemptions*, and little more than an outline can be given in a work, in a considerable degree confined to elementary principles, and general results ; but in some statutes, from the loose manner of wording them, and a certain indistinctness of description, some difficulties will occur respecting the extent, within which these rules are designed to operate. For example, it has been decided that the exception in 12 Geo. 3. c. 61. § 11. of mills then used for making gunpowder, &c., does not apply to the limits first mentioned in that clause, but only “ to the other part of Great Britain,” not within those limits ; and therefore an information, charging the keeping more than the allowed quantity of gunpowder within the specified limits, need not negative this exception.

This is all that is considered necessary to be observed in *this place* respecting the first division of a conviction, viz. the charge contained in the information.

* See *past*, Precedents of Convictions, for a further elucidation of this position.

† 9 Geo. 2. c. 23.—2 Str. 1101. 1 Str. 555.

‡ R. v. Hall, 1 T. R. 320.

Summons.

2dly. The summons. In all cases, except those few, in which particular statutes have allowed justices to convict offenders on view of the offence, (which privilege when exercised must be stated accordingly on the face of the conviction) a summons of the defendant is a necessary step in the proceedings, that he may have time to prepare himself for defence. That this step has been complied with, in order to shew that no surprise has been attempted, such summons must be stated in the conviction. How, and in what precise terms, it must be so stated, has been the subject of some controversy.* It is now, however, a decided point, that it is sufficient to state, that the party was *duly summoned*, without further particularizing the circumstances; for the court above will always suppose a magistrate has executed his authority regularly, where *nothing to the contrary* appears.† If, however, it be thought necessary to set out the summons, it must on the face of it be in all respects regular; for, if it appear otherwise, it will be sufficient reason for quashing the conviction;‡ the day, and place, and authority, must appear to have been correctly stated, as well as the proof of service on the defendant; and also that sufficient time was allowed for defence;§

To be stated generally.

Appearance or non-appearance.

3dly. It must next be stated, that the defendant appeared to the summons, or that he did not appear, as the fact was. If he appear, he cannot afterwards take advantage of any irregularity in the summons, except indeed (if it be so) that it did not allow sufficient time for defence; and if he wave that objection at the time of hearing, he cannot afterwards take advantage of *that* particular objection on an appeal. || *Before whom* the defendant appeared, in consequence of the summons, being necessary to be stated, in order to show the authority to convict, it was formerly considered doubtful, whether the hearing of the defence, and the adjudication, must not be by the same justice who received the information: but the uniform practice of many years to

* R. v. Green, 10 Mod. 213.

† R. v. Stone, 1 E. R. 639.

‡ R. v. Venables, 2 Ld. Raym. 1405.

§ R. v. Mallison, 2 Burr. R. 679.

|| R. v. Stone, *ante*.

the contrary, especially at the police offices in the metropolis, where there is a continual succession of magistrates; and the invariable discouragement given to any objection on this ground by the courts; seem to recognize and sanction a different view of the subject. Indeed objections on this ground alone have long ceased to be taken at the bar.* If the party *do not* appear, after proof of summons duly served, the justice may proceed to judgment, and he must state all these facts in their proper order in his conviction; † but it is not generally necessary (unless such necessity be expressed in, or logically to be inferred from, the words of the statute, on which the conviction is founded,) that the defendant should appear in person; for he may appear by his attorney, or *other person*, ‡ and if he do so, it must be so stated in the conviction, for otherwise it would not be a true representation of the facts as they actually occurred. However, if the party do himself appear, it seems he cannot demand, as a right, however as a courtesy it be generally admitted, to have his attorney also present. §

4thly. The next matter to be stated in the conviction is the proof exhibited to establish the charge. The confession of the party charged with an offence, appears, *ex vi termini*, to be the most decisive proof that can be exhibited; and it is so esteemed in law, if it agree with the charge, that is to say, admit the *facts* as charged; for whether such facts amount to the *offence* inferred, as a consequence from those facts, is a mere question of law: and the defendant does not, by a confession of the mere facts, admit the legal effects of them, or compromise his right of appealing, or any question of legal interpretation, or of erroneous application of the facts confessed to the information exhibited; as where one was informed against, under the hawkers' act, for selling silk handkerchiefs without a hawker's licence, he confessed the selling, &c. as laid in the information, but afterwards appealed against the conviction, on certain words in the act, under which his *manner* of selling did not come; for he insisted he did not trade in the manner described by the

Confession or
defence.

* Nares, 12. † R. v. Simpson, 1 Str. 44. ‡ Id.

§ R. v. A. B. & C. D. Justices of Staffordshire, 1 Chit. R. 215.

clause, and the conviction was quashed accordingly.* These positions are so obvious to the commonest *legal* apprehension, and have so long received the sanction of decided cases, that it is unnecessary to urge them further.† It is, however, right to notice, that, with these restrictions of interpretation, so comprehensive, and decisive, is the proof by confession holden, that when a statute only gives a justice authority to convict *on the testimony of one, or more, witness, or witnesses*, the interpretation of the courts is, that “the confession of the defendant is equivalent to the evidence of a witness, and sufficient to satisfy such words of the statute.‡

And as the confession supplies the want of evidence, so it cures any objection to the *manner* of taking it, as that it was not taken in defendant’s presence, or that improper evidence was taken, &c. &c. § The confession then makes part of the conviction.

¶ Evidence to substantiate the charge.

5thly. If the defendant appear, but deny the charge, (or as has been before observed, neglect to appear,) the next step is to substantiate the information by testimony. It has been already noticed, that all the witnesses must be described by name, and the *rule* seems to be *universal*, although the *reason* may be *particular*; viz. to shew that the defendant was not convicted on the testimony of a person interested to procure a conviction, the informer, who being entitled to the penalty, or some portion of it, according to the provisions of each particular statute, stands in that predicament. || Some statutes, indeed, make exceptions to this rule, as in some instances of complaints by servants against their employers; of the giving false characters to servants by masters and mistresses, under 32 Geo. 3. c. 56; and some few others, wherein, from the necessity of the cases, the informers are *made* good witnesses to convict, by

* R. v. Little, 1 Burr. R. 609.—See *post*, the precedent.

† 3 Burr. R. 1475.—4 Id. 2279.—1 T. R. 320.

‡ R. v. Gage, 1 Str. 546.

§ R. v. Clarke, Cowp. 35.—R. v. Hall, 1 T. R. 320.

|| R. v. Tilly, 1 Str. 316.—R. v. Blaney, Andr. 240.

special provision. These cases however only form exceptions to, and by no means contradict or contravene, the general rule. But the interest must be certain and direct, or it will only go to the credit, not to the competency, of the informer as a witness. This distinction is sufficiently exemplified in a single case,* which was that of an information against defendant for having naval stores in his possession contrary to the statute, 17 Geo. 2. c. 40. and 9 and 10 W. 3. c. 41. A witness was called to prove the case, who appeared to be the informer, and was objected to as incompetent, on the authority of *Rex v. Blackman*, 1 Esp. 95; in which case, on information on the statute, a witness was called who was a police officer, who stated that, on information given of stores, &c. he went with a warrant to search, and found the naval stores. He was asked on his *voir dire* whether any officer, or other person, had given information to the admiralty respecting these stores? Upon which Erskine objected to his testimony, on the ground that, as the statute gave half the penalty to the informer, and no information being given to the admiralty, *he* must be deemed to be the informer. It was answered, that the same statute also left it in the discretion of the judge who tried the offender to inflict a corporal punishment, *in lieu of a fine of 200l.* He was asked if he did not expect part of the fine, in case the defendant should be convicted? He said he did, and refused to release. Lord Kenyon said, though there certainly is an option, either to fine, or inflict corporal punishment, that the former mode had generally been adopted, and though in the case alluded to the court had inflicted a corporal punishment, that had been in consequence of declarations by the person convicted, that he did not mind the fine, as he could easily pay it; and therefore on the footing of interest, he thought a person of this description inadmissible, and that the declarations of the witness, in this case, sufficiently shewed the bias of his mind, that a prospect of a share of the fine would influence his testimony. But Lord Kenyon said, since the decision

* *R. v. Cole*, 1 Esp. 107.

of this case of *Rex v. Blackman*, he had fully considered the objection to the competency of the informer being a witness on the ground of interest. That the court having a power either to inflict a corporal punishment, or fine, at their discretion, in case of conviction; and, as it was only in case a fine was imposed, that the witness could expect to derive any benefit, and *that was uncertain* as depending on the judgment of the court, he was now of opinion that the objection only went to his credit, and not to his competency, and that therefore his evidence was admissible.

The evidence should be stated to have been given in the presence of the defendant, that it may appear he has had the benefit of a cross examination; * but if it be not so stated, yet if enough appear upon the conviction to shew, that the witness was examined upon oath, in the presence of the defendant, the court will support the conviction. †

Thus, if a defendant appear and plead, and the evidence be given on the same day, the court will intend that the evidence was given in the defendant's presence, even though it be stated that the appearance was at A, and that the evidence was given at B. ‡

And where, on a conviction, the information was stated to have been laid on the 29th of May, 1805, and that the defendant appeared on the 4th of June (without mentioning the year), and it concluded by stating the conviction as *signed and sealed on this 4th of June, 1805*, the court held that the proceedings appeared to have been all one continuing transaction, from the appearance of the defendant, after the summons, to the close of the conviction; and that this appeared both from the antecedent date of *May, 1805*, and the date of the conviction, to have been *June, 1805*, because the defendant was stated to have appeared on the 4th of *June*, and the conviction was signed and sealed on the 4th of *June, 1805*; and they held, that it therefore ap-

* *R. v. Vipont*, 2 Burr. R. 1163.—*R. v. Crowther*, 1 T. R. 125.—*R. v. Barwell*, 6 T. R. 75.

† *R. v. Lovett*, 7 T. R. 152.

‡ *R. v. Swallow*, 8 T. R. 284.

peared, that the evidence was given in the defendant's presence; as his departure, pending the continuance of the transaction, could not be presumed.*

But a confession of the offence, as before observed, cures the irregularity of not stating, that the evidence was given in the presence of the defendant.

As the record of the conviction ought to be, as has been already observed, an exact account of all the proceedings before the magistrate, in order to shew that he has not exceeded his authority, the *whole evidence* which applies to the charge must be *particularly set out*, by which the court may judge, whether sufficient proof appear to sustain every material allegation, and to justify the adjudication. It has been noticed, in a former page, that on this hinges the difference between orders, and convictions; for in orders it is sufficient to state the result of the evidence, but in convictions the evidence itself must be particularly given.† Thus, it will not be sufficient to state that *the said offence was fully and duly proved*, for that is to state the result of the evidence only, but not the evidence itself.‡ Some Exception. laxity however, amounting to something like an exception to the universality of this doctrine, has been reluctantly admitted in convictions under the game laws; but, at most, these only form an exception to an otherwise universal rule.§

And it is necessary to state the evidence *on both sides*, viz. as well that for the defendant, as that on the part of the prosecution.

In these summary convictions, the opinion of the justice being substituted for that of a jury according to the common law process, the weight of the evidence on either side, if there be any essential difference, must be determined by the justice; therefore, if the whole evidence be clearly set out, and *that* on the part of the prosecution sufficiently apply to the facts alleged, and constitute the offence charged,

* R. v. Crisp, 7 E. R. 389.—R. v. Swallow, 8 T. R. 284.

† R. v. Killé, 4 Burr. R. 2063.

‡ R. v. Reed, Doug. 469.

§ R. v. Harley, Cald. Ca. 175.—R. v. Pearce, 9 E. R. 358.

whatever be the evidence brought to rebut it by the defendant, every thing respecting the credit to be given to one, or the other, which would be right to be left to a jury, it must be presumed was right to be left to the opinion of the justice, and his conclusion fairly drawn from it cannot be disturbed on appeal.*

It follows, from what has been advanced, that the evidence adduced, and stated in the convictions, must be considered as entirely distinct from the allegations of the information, in support of which only it is exhibited: in other words, that although the information be on oath, and a sufficient *general* description of the offence be given in it, yet the proof of every *particular* which goes to establish such offence, as each is to exempt the defendant from the consequences of it, (if any,) must be exhibited on the *proof*. Thus it is insufficient in most cases to say, "it appears the defendant is guilty of the premises *charged in the above information*," for though in convictions on the game laws the qualifications be negatived in the information (in order to give the justice jurisdiction, and cannot, in all probability, in the nature of things, be *separately and individually* negatived by the evidence,)† yet in most instances the facts which contribute to the establishment of the charge in the whole, or on some of its essential parts or bearings, (as age, quality, numbers, &c.) are open to proof by the testimony of witnesses, and necessary to be so proved.‡ Thus, *ex gr.* under the statute against profane swearing, the quality of the defendant; under the coach regulating act, the ages of the supernumerary passengers; and under the hawker's act, the repetitions of the fact charged;§ go to the essence of the respective offences, and are facts susceptible of testimony, in accusation, and defence; the evidence for both of which, it has already been ob-

* R. v. Lovet, 7 T. R. 152.—R. v. Clarke, 8 T. R. 228.

† R. v. Davis, 6 T. R. 177.—R. v. Smith, 8 T. R. 588.

‡ R. v. Stone, 1 E. R. 639.—Nares, 55.

§ R. v. Crisp. 7 E. R. 397.

served, is necessary to be stated, that the court, on appeal, may judge whether the offence be sufficiently charged, and supported; whether the defence comprehend an excuse, a qualification, or an exemption; and therefore whether the justice have drawn a right conclusion.

6thly. Every conviction must contain an adjudication of the defendant's having been convicted, whether the punishment be, or be not, *fixed* by the statute.* Judgment or adjudication. There must also be a judgment of forfeiture, for it is said, where there is an appeal, "it is not from the judgment of the justice as to the fact, but because he has ordered a *penalty* to be paid, or committed the defendant, who wants to stay execution, or be released from prison."†

The conclusion of a conviction ought to be, and commonly is, "the said defendant is accordingly convicted of the offence so charged upon him, (or against him) as aforesaid, contrary to the form of the statute, &c. and I do therefore adjudge and declare that the said defendant hath forfeited for his said offence the sum of, &c." This seems to be the most usual and efficacious mode of expressing the conviction; and it may be adviseable to pursue it in all cases. However, the justice is not restricted to these exact words; for in one case, where the conviction (after stating the evidence) concluded thus:—"and thereupon the said defendant, the said day of &c. before me the same justice, by the oath of one credible witness aforesaid, according to the form of the statute aforesaid, is convicted, and for his offence aforesaid hath forfeited, &c." though it was objected, that it did not appear of what the defendant had been convicted, yet the court held it to be sufficient.‡

And a defendant may be convicted of several penalties in one conviction; for it is the constant practice in actions on the game laws, and not unfrequent in convictions.

But whenever several acts are charged to have been committed, it must depend on the words of the statute inflicting

* R. v. Harris, 7 T. R. 238.

† Nares, 65.

‡ R. v. Thompson, 2 T. R. 18.—See also R. v. Chandler, 14 E. R. 267.

the penalties, whether they are distinctly incurred for distinct offences, or whether the several acts done form only one aggregate offence. Acts done on different days must always be distinct offences, but different acts done on one day are liable to the distinction just taken,* and each particular one must be decided by the obvious design of the legislature in passing the statute, on which the conviction is founded, assisted and fortified by the analogy of similar cases.† It must however be observed that adjudication on *every point* to which it refers, must be *precise* and *exact*; for a judgment for too little is as bad as a judgment for too much; and this is so, whether it respect the fine, the costs, or any other portion of the penalty which has been attached to the commission of the offence.‡

In a case where commitment was, that “the defendants should lie in prison *till they pay their fine* ;” and no precise fine being mentioned, the court held the conviction naught, and quashed it. §

And where a statute says, that upon non-payment of the penalty and costs, the offender shall be committed for such a time, or *until* the penalty and *charges* shall be paid (as is the case under 6 Geo. 1. c. 48. for cutting down timber trees), and the conviction adjudge him to be imprisoned a certain time, or *until* the forfeiture, *together with the charges* previous to, and attending, the said conviction, be paid, but does not ascertain what the charges are, it is bad. ||

So, in another case, where a private act (7 Geo. 2. c. 11), gave power to a magistrate for a town and borough, on a summary conviction there against that act, to *levy the penalties by distress, together with the reasonable charges of taking and keeping such distress*; and the conviction returned into B. R. upon a writ of *certiorari*, did not appear to have adjudged what the defendant was to pay for those charges:

* Brooks v. Millegan, 3 T. R. 509.—Bull. Ni. Pri. 189.—8 T. R. 284.

† R. v. Clarke, Cowp. 610; Paley, 162. ‡ R. v. Salmons, 1 T. R. 251.

§ R. v. Elwal, 2 Lord Raym. 1314. || R. v. Hall, Cowp. 60.

it was, by the counsel who was to have argued in support of the conviction, admitted, on the authority of *The King v. Hall*, to be bad, and the same was accordingly quashed.*

And it is to be observed, that, where a statute impose a penalty, if any person or persons shall do *an act* prohibited, if two persons do such act together, and are jointly convicted, it is deemed but one offence, and the magistrate can only inflict one penalty; for in a case of the *King v. Bleasdale* and another, T. R. 32 Geo. 3, where the defendants were convicted in five pounds *each*, under 5 Ann. c. 14. § 4, for using a greyhound to destroy game, without being qualified, the court, without hearing any argument, said the conviction could not be supported, for that it was only one offence, and that the magistrate should only have convicted them in one penalty; and they said, that this point had been several times decided; the conviction was therefore quashed. † But if either the penalty imposed by the statute be upon *each person* convicted; or, if the particular nature or quality of the offence be such, that the guilt of each of the parties be essentially distinct from that of the others; in either of these cases, the parties ought to be convicted in several and distinct penalties. ‡

If two commit a joint offence, incurs only one penalty.

But if offences are distinct, penalties are distinct also.

Commonly, the distribution of the penalty too makes a necessary part of the judgment. Where the statute itself gives it in *certain proportions*, indeed, if the conviction set forth that *the offender is convicted, and shall forfeit such a sum according to the form of the statute*, without making a distribution, in terms, to the different parties entitled, the court has held that in this it was well enough, § because the statute has itself pointed out the proportions to be distributed, and there was nothing left uncertain, or discretionary.

Application of the penalty.

Distributive shares pointed out by the statute.

But where the distribution directed by the statute, was part to the party grieved, and the remainder to *the over-*

* R. v. Symmonds, 1 E. R. 189.

† 4 T. R. 809.—R. v. Swallow, 8 T. R. 286.

‡ R. v. Clarke et al. Cowp. 610.—R. v. Hube. et al. 5 T. R. 542.
—Cripps. v. Durden. Cowp. 640.

§ Salk. 383.

certain, or discretionary, by the statute. *seers of the poor of the parish*, a distribution to the poor of the township was held bad, because there may be many townships in the same parish, and therefore there was uncertainty; but it was admitted, if it had been general, viz. to be distributed as the law directs, it would have been well enough,* for there would not necessarily have been any uncertainty in this case.

But where justices are required by a penal statute to distribute the penalty, on conviction, amongst certain persons, according to their discretion, or in any other indeterminate proportions, an adjudication, that the forfeiture be disposed of as the law directs, is bad; for in such case the justices should adjudge, what the several proportions shall be.†

A conviction under 42 Geo. 3, c. 119, directing the penalty to be distributed as the law directs, is bad.

The discrimination to be attended to, in these different circumstances, is rendered particularly clear by the case of a conviction upon the statute 42 Geo. 3. c. 119, against unauthorized lotteries, removed by *certiorari* into the court of king's bench. It was contended, that the conviction was bad for uncertainty; that, by the adjudication the penalty was directed to be applied and distributed as the law directs, without specifying to whom; and *R. v. Dempsey* was especially relied on as in point.—Lord Ellenborough, C.J. “This was a conviction before a magistrate upon an offence under the statute 42 Geo. 3; the act directs, that, where the party accused shall be convicted of the offence, and such penalties (viz. one hundred pounds), shall not be immediately paid, it shall be lawful for the magistrate to commit the offender to prison for any space of time not exceeding six calendar months, nor less than one, &c. until such penalty shall be satisfied. And further, ‘that every such penalty, when paid upon conviction, shall go and be applied, one third thereof to his Majesty, one third to the use of the informer or informers, and the other third thereof to the person or persons apprehending, or securing, such offender or offenders.’ The information, and evidence, given in support of the same, as stated in the conviction, appear to have warranted the magistrate in drawing therefrom the

* *R. v. Priest*, 6 T. R. 538.

† *R. v. Dempsey*, 2 T. R. 96.

conclusion he did, viz. that the defendant was guilty of the offence charged upon her. The conviction then further proceeds in these words: 'It is therefore considered by me the said justice, that the said *Sarah Seale* be convicted, and she is, by me the said justice, accordingly convicted of the offence charged upon her in and by the said charge and information,' and for which said offence, I the said justice do adjudge her, the said *Sarah Seale*, to forfeit and pay the sum of one hundred pounds, *to be applied and distributed, when paid, as the law doth direct.* It then proceeds to state, that she was required to pay the penalty immediately, which she neglected and refused to do, and was thereupon committed to prison for six calendar months, &c. in the terms directed by the act. It has been argued, on the authority principally of the *K. v. Dempsey*, that this conviction is bad, inasmuch as it contains no adequate adjudication in respect to the penalty, so as to render it properly applicable, and distributable amongst the several objects of such distribution, under the act of parliament, the words of the conviction being only '*to be applied and distributed, when paid, as the law directs.*' And though a judgment, *quod convictus est, et forisfaciat*, or even perhaps *quod convictus est* alone may, as was held in the *K. v. Chandler*, Salk. 378, be sufficient where the statute, acting upon the facts stated in the conviction, is competent of itself to carry the conviction into full unequivocal execution and effect, it is otherwise where the immediate legal consequences of the conviction are made by the statute to depend upon the discretionary judgment of the court. If, therefore, the punishment, which is to follow upon conviction, be either discretionary as to its kind, or, being certain in its kind (as a pecuniary penalty or instance) is uncertain as to its amount; or where being certain in its amount, either the particular description of persons amongst whom the distribution is to take place is uncertain; or the individuals answering such particular description, and to whom shares of the penalty are to be assigned, are in any manner the subject of discretionary election and appointment; in all such cases, the magistrate, or court, before whom such conviction is had, must, at the

time of the adjudication, actually exercise his discretion upon these particulars, and thereby matters that would otherwise remain wholly undecided are determined. In the present instance, the mere adjudication of a conviction of the offence, and of a forfeiture of the penalty of one hundred pounds, to be distributed as the law directs, leaves it wholly undecided whether there exists, in this case, one of the three descriptions of persons, amongst whom the penalty is to be distributed under the act, viz. *the apprehending or securing the offender*: this description is specifically, and in terms, applied to any person *whom* on the face of this conviction; it is therefore left to be supplied by argument and inference, whether there be any persons, in this case, to whom the description in the act applies; and whether the two persons by whom the offender is stated to have been brought before the convicting justice, were understood by him, and must in the construction be considered by us, as having been mentioned to him, to take that one third part of the penalty which the act, *eo nomine*, assigns to persons apprehending, or securing the offender; nor can the want of this necessary ascertainment of the objects of distribution be obviated, or supplied by considering the whole penalty as vested in the crown: in the first instance, by the adjudication of the forfeiture. On the ground therefore, of the uncertainty which appears upon the face of this conviction, as to the objects of the distribution of the penalty which the act requires to take place, we are of opinion that the conviction is defective and cannot be sustained." *

Costs form
part of the
judgment.

Costs, also, as well as penalties, form a constituent part of the adjudication necessary to be considered here. It has been already observed, that every part of the adjudication must be precise and exact. Costs made part of the penalty to be adjudged by some statutes, which directed summary convictions for certain offences; by others, for other offences, costs were not mentioned; in the latter instance, therefore, the magistrate had no power of awarding them. By 18 Geo.

* R. v. Seale, 8 E. R. 568.

s. c. 19. this power is given generally in substance as follows: "When any complaint shall be made to any justice, and warrant, or summons, shall issue in consequence hereof, the justice, who shall have heard and determined such complaint, shall award such costs to be paid by either of the parties to the other, and levy the sum so awarded by distress, and, if no effects can be found to levy upon, shall commit for not more than a month, nor less than ten days, or until the sum so awarded be paid, together with the expenses of the commitment. Provided, that, where the penalty shall amount to, or exceed five pounds, the costs shall be deducted by the said justices, *according to their discretion*, out of the said penalties, so that it shall not exceed one fifth part of the said penalty; and the remainder of the said penalty shall be paid to, or divided among, the person or persons who would have been entitled in case the act had not been made." It follows, therefore, from this statute, coupled with what is gone before, that, where any particular statute directs the costs, their distribution, and the mode of compelling payment of *them*, as well as the fine, all those circumstances must be precisely complied with, and stated in the adjudicatory portion of the conviction; but where the statute punishing this offence is silent as to costs, they are to be adjudicated with similar precision, if awarded at all, according to the provisions of this recited statute. Any variance from the rules laid down, either by any particular statute, or by this statute respecting costs, will be equally fatal to a conviction, as similar incorrectness respecting the fine, or other penalty, imposed, in the punishment for the commission of the prohibited act; and, as has been previously observed, the adjudication must ascertain the precise sum of the fine to be paid, the costs, the charges of levying or obtaining the same, as well as the duration of any alternative discretionary imprisonment for non-payment of fine, or costs, or both.*

Thus, however difficult it may in some cases be for the justice to ascertain, at the time of conviction, satisfactorily to himself, any one of these matters, he cannot delegate the

* R. v. Symonds, 1 E. R. 189.

duty of ascertainment, nor defer that of awarding; for under circumstances of this description a desire to do extreme justice by means of a delegation to another, by name, of an authority to enquire into actual charges, and to award accordingly, was held bad.* The costs of the Appeal are a different subject, and noticed in a subsequent page.

The adjudication is concluded and perfected by the convicting justice or justices, (as the statute by which it is authorized may require it to be, by one, or two,) subscribing and sealing it: by which act it becomes a record, and without which, it cannot be produced before any court for any ulterior purpose, as for Appeal, &c. †

Having gone through the *ordinary* requisites of convictions on a *general* view of them, we must now proceed to the consideration of many particulars which are incidental, or occasional; directed by particular statutes, determined in particular decisions of courts, or to be analogically inferred from similar interpretations:

Convictions
should be
returned to
sessions.

The necessity for *returning* a conviction has been considered by *some* persons, writing as with authority, and by *many* justices in their practice, as an incidental, or occasional obligation; and this doctrine has been treated as having received confirmation from a case, ‡ in which Lord Kenyon merely admits the reasonableness of not requiring justices to draw up convictions *in form* at the *time of making* them, but says, "it is sufficient if they take notes of all the material facts and circumstances *at that time*, and draw up the formal conviction afterwards, even after the penalty has been levied under their judgment." This, however, we may conclude, by what has been said by the court on other occasions, was by no means designed to encourage the slovenly practice of not drawing up, and consequently of not returning, convictions, unless called for by Appeals or *certiorari*.

Return of
conviction
directed by the
statute.

This appears clearly from another case, where it was laid down from the bench that, "in every instance, whether the party convicted appeal, or not; even whether an Appeal be

* R. v. St. Mary, Nottingham, 13 E. R. 57, note.

† Dalt. 115.—R. v. Elwall, 2 Str. 794; Boscow. 11.

‡ R. v. Barker, 1 E. R. 186.

given by the statute, or not; the justice ought to return a conviction, that it may be seen if there be any forfeiture to the crown, and that if there be, it may not be deprived of them." In some statutes, the return of the conviction is particularly pointed out, and directed. This happens especially in cases where a *second* conviction is to be visited by a severer judgment, because, in such cases, the first conviction, or a true copy thereof, as returned, and filed by the clerk of the peace, is usually declared to be sufficient evidence of the former conviction.

Some statutes expressly exclude an Appeal, others take no notice of the matter. On the former of these cases no comment can be necessary; on the latter it is sufficient to observe, in the words of Lord Ellenborough on a very modern determination,* "if there be no words which bear reference to any appeal, *the court cannot supply the want of them.*" However, the particular case which excited this observation, and which arose out of an excise act, gave occasion to a new statute,† by which much of the ambiguity of the former ones, relative to this subject, is removed, by giving an Appeal, in direct terms, from the convictions of justices.‡

In all cases where a conviction is necessary, if the convicting justice, after receiving due notice of Appeal, neglects to return the conviction, whereby the party is prevented from prosecuting his Appeal, independently of any other punishment for such misbehaviour in his office, he is liable to an action for damages. And the defendant is entitled, on application, to a copy of his conviction from the convicting justice, for it is a record, and he is entitled to any advantage that may arise from it.§

But if, by mere mistake, and without fraudulent designs, a copy be given to the party demanding it, which is not quite correct, and a correct one be returned to the session, that returned to the court is sufficient for it to proceed to

* R. v. Skene, 6 E. R. 514.

† 48 Geo. 3. c. 74.

‡ See Paley, 200.—and more especially Nares, 121.

§ R. v. Midlam, 3 Burr. R. 1720.

judgment upon: indeed, it is the proper record of which the court is to take cognizance.*

Acquittal of a defendant cannot be reversed.

If a defendant, against whom an information has been laid for a penalty, be acquitted by the justices, the court of king's bench cannot reverse the judgment; and that is so, even though the justices state, in return to a *certiorari*, evidence which *prima facie* is sufficient to convict; for the evidence given is entirely and exclusively for the consideration of the justices below, who are placed in the situation of a jury; and if they acquit a defendant, the court cannot substitute themselves in the place of the justices, acting as jurymen, and convict him; for they cannot judge of the credit due to the witnesses, whom they did not hear examined; all that they can do, is to look to the form of the conviction, and see that the party, if convicted, has been convicted by legal evidence.†

Justice cannot be compelled to enforce an erroneous conviction.

But if it appear to a justice after conviction, that the defendant has been erroneously convicted as to matter of substance, he cannot be compelled to issue a warrant to levy the penalty adjudged; for where a mandamus was directed to a justice of the peace, *commanding him to levy, or cause to be levied, a certain penalty in a certain conviction against T. L.* the justice returned, 'that the defendant was convicted of the penalty before him, (*setting forth the manner and occasion,*) but that the conviction was invalid in law, and was not a conviction of any offence, for which the penalty was payable, or could legally be levied.' BY THE COURT, "The return to the writ of mandamus is good and sufficient; for although, when a justice has once fairly convicted a man, he ought to proceed to enforce that conviction: yet if it be altogether a nullity, the magistrate is not bound to proceed further, in order to subject himself to damages:" it is, however, otherwise, if the error be merely formal; ‡ as appears by a case already cited, in which the court refused a rule to shew cause, for a criminal information against a

And justices may amend

* R. v. Allen, 15 E. R. 333.

† R. v. Reason, 6 T. R. 575.

‡ R. v. Robinson, 2 Smith, R. 274.

magistrate, for returning to a writ of *certiorari*, a conviction of a party, in another and *more formal* shape, than that in which it was first drawn up, and of which a copy had been delivered to the party convicted, by the magistrate's clerk, the conviction *returned* being warranted by the facts. And hereon Lord Kenyon, C. J. observed, that "if the magistrate had done no more than return the conviction in a more formal shape, instead of sending it up to the court in the informal manner in which it was first drawn, and supposing that the facts, as they really happened, would warrant him in the return he had made, (*the contrary of which was not suggested*;) he was of opinion, that it was not only legal, but laudable, and he would have done wrong if he had acted otherwise."

their convictions in point of form before they return them.

By way of reducing to *example*, the *precepts* which have been mentioned in the preceding pages, this may perhaps be the most proper place for introducing a general precedent of a conviction conformable with those general precepts, as applicable to cases where no particular form is directed by the statute enacting the penalty or forfeiture.

"County of } Be it remembered, that on the
 (to wit.) } day of in the year of the
 reign of our sovereign Lord George the Third, now King
 of the United Kingdom of Great Britain and Ireland, at
, in the said county of, A. B. of
 in the said county of yeoman, in his proper person
 came before us P. Q. and R. S., esqrs. then and still being
 two of the justices* of our said Lord the King, assigned to
 keep the peace of our said Lord the King in and for the
 said county of, and also to hear and determine di-
 vers felonies, trespasses, and other misdemeanors done
 and committed in the said county of, and then and
 here gave us, the said justices, to understand, and be in-
 formed, that one G. D., of, in the county of
 foresaid, yeoman, on the day of, in the said

Information.

* Or before one of such justices, if the statute direct that the conviction may be before one.

43d year of the reign of our said sovereign Lord the King that now is, did at, in the county of aforesaid, [*here set forth the offence, in the words of the statute, or as near thereto as may be,*] contrary to the form of the statute in such case made and provided, whereby, and by force of which said statute, the said G. D. hath, for his said offence, forfeited the sum of, one moiety thereof (all necessary charges for the recovery thereof being first deducted) to his said Majesty, and the other moiety to the said A. B. [*or as the distribution is, and as near as may be in the words of the statute,*] and the said A. B. prays judgment of us, the said justices, in the premises, and that the said G. D. may be convicted of the said offence, according to the statute in that case made and provided: and the said G. D. afterwards, that is to say, on the day of in the said forty-third year of the reign of our said Lord the now King, at aforesaid, in the county aforesaid, had notice of the said information, and of the offence therein charged upon him as aforesaid, and was then and there, by us the said justices, in due manner summoned to appear before us, the said justices, at aforesaid, in the county of aforesaid, on the day of, in the said year of the reign of our said sovereign Lord the King that now is, in order to make his defence against the said charge contained in the information aforesaid.

Summons.

Appearance. And thereupon afterwards, that is to say, on the said day of, in the year of the reign of our said sovereign Lord the King that now is, at, in the county of aforesaid, he, the said G. D. being duly summoned as aforesaid, in this behalf, before us, the justices aforesaid, appeareth, and is present, in order to make his defence against the said charge contained in the said information, and having heard the same, he, the said G. D. is asked by us, the said justices, if he can say any thing for himself why he should not be convicted of the premises above charged upon him in form aforesaid, and thereupon he saith that he is not guilty of the said offence [*or pleadeth and saith that (as the defence may be)*], whereupon we, the said justices, at the same time and place, that is to say, on

Defence.

the said day of, in the year aforesaid, at aforesaid, within the said county of, do proceed to examine into the truth of the said complaint contained in the said information, in the presence and hearing, as well of the said A. B. as of the said G. D. and thereupon on the same day and year last mentioned, at aforesaid, in the county aforesaid, M. N., a credible witness in this *Evidence.* behalf,* comes in his proper person before us, the said justices, to prove the said charge contained in the said information against the said G. D., and is now here, by us, the said justices, sworn, and does before us the said justices, take his corporal oath, upon the holy Gospel of God, to speak the truth, the whole truth, and nothing but the truth, of and concerning the matters contained in the said information, (we, the said justices, having administered, and having sufficient power and competent authority to administer such oath to him in that behalf;) and the said M. N. being so sworn, doth, on his said oath, say and depose, in the presence of the said G. D. that the said G. D. on the said day of, in the said year of the reign of our said sovereign Lord the King that now is, at aforesaid, in the county aforesaid, did [*here set forth the evidence;*] and the said G. D. does not produce any evidence to contradict the proof aforesaid; whereupon, and upon hearing and duly examining the whole matter, it manifestly appears to us the said justices, that the said G. D. is guilty of the offence charged upon him by the said information. It is therefore considered and adjudged by us, the *Judgment.* said justices, that the said G. D. be convicted, and he is accordingly convicted of the offence charged upon him, in and by the said information. And we do hereby adjudge, that the said G. D., for the said offence, hath forfeited the sum of pounds, of lawful money of the United Kingdom of Great Britain and Ireland, current within the realm of Great Britain, to be distributed according to the form of the statute in that case made and provided. [Or, that the said G. D. for the said offence, be committed, &c. pursuing

* By some statutes two witnesses are required.

the words of the statute if the punishment be by imprisonment.] In witness whereof we, the said justices, to this present record of conviction, have set our hands and seals at aforesaid, in the county aforesaid, the said day of, in the year of the reign of our said sovereign Lord the King that now is."

If the defendant, having been duly summoned, do not appear, say—

Non-appearance.

" And afterwards, on the day of in the said 43d year of the reign of our said Lord the now King, at aforesaid, in the county aforesaid, he, the said G. D. had notice of the said information, and of the offence, therein charged upon him as aforesaid, and was then and there, in pursuance of our summons in that behalf issued, duly summoned to appear before us, the said justices, at aforesaid, in the county aforesaid, on this present day of, in the said year of the reign of our said sovereign Lord the King that now is, in order to make his defence against the said charge contained in the information aforesaid. And the said G. D. neglecting to appear here before us, in consequence of our said summons, and not making any defence to the said charge contained in the said information, we, the said justices, do now proceed to examine into the truth of the said complaint contained in the said information, and one M. N., a credible witness, in this behalf, now here appearing before us, so being such justices as aforesaid, as a witness, to prove the said charge contained in the said information against the said G. D., is now here by us, the said justices duly sworn, and does before us, the said justices, take his corporal oath, &c. *as in the preceding form.*"

Or, if the party confess the charge, say—

" And because the said G. D. hath nothing to say, nor can say any thing in his own defence touching and concerning the premises aforesaid, (or doth, of his own accord, freely and voluntarily acknowledge and confess, all and singular the said premises to be true, in manner and form as the

same are charged upon him in the said information) and because all and singular the premises being heard and fully understood by us, the said justices, it manifestly appears to us”

But, where a form of conviction is prescribed even *generally* by a statute, it is safest strictly to adhere to it by adopting the very words; but if the justice vary therefrom in point of *phrase*, he must at least draw it according to the *precise intent and purpose* of the act. An example illustrative of this position has been already given in treating of “*the adjudication*.” * In some statutes the form is so *specifically* directed, that no other mode of expression will suffice. Thus, it is in *some statutes* said, “*the conviction shall be to the following, or the like effect*,” or other words of a similar import: in *others*, the expression is “*and the conviction shall be in the form following*.” In this latter case the direction is peremptory, and must be obeyed; † but as common understanding is sufficient to distinguish (in common cases) where the *sense and purport* of the statute alone need be kept in view, from those instances in which the very *words* must be used, it is unnecessary to dwell upon *this point*, especially as *another*, viz. where it is necessary that the description in the conviction should be *more particular* than even the words inserted in the statute itself, (sometimes by pursuing a narrower description than what is conveyed in the literal terms thereof, sometimes by enlarging upon the general terms prescribed in the statutable form of conviction) calls for more particular attention. An example or two of each of these conditions will sufficiently illustrate the position. Thus, a conviction under the 5 Anne, c. 14. for “*keeping a gun*,” alledging it to be “*an instrument for destroying the game*,” (in the very words of the act) has been quoted; for though the expression in the statute be “*any engine to destroy the game*,” yet, as a gun may be kept for self-defence, or other lawful purposes, not intended

Instances wherein the words of statute must be rigidly followed, and where departed from in convictions under them.

Descriptions narrowed.

* R. v. Priest, 6 T. R. 538. and *ante*, p. 687.

† R. v. Jeffries, 4 T. R. 769.

Description
extended.

to be prohibited, it would be to set the words of the act at war with its meaning and object, if the conviction were not to narrow them so as to meet that object, by confining the description of the offence to the *keeping the gun for the special purpose prohibited*; which special purpose must therefore be alleged to the effect of narrowing the description in the statute.* An instance on the contrary side; viz. where the statutable form of conviction is insufficient for expressing the purpose of the act, and the description of the offence must therefore be *enlarged*, was determined in a case already referred to for a different purpose,† as well as by several others, in which, if not the principal point in discussion, it was an incidental one. It was the case of a conviction under a statute, ‡ the form annexed to which directs that the penalty “shall be distributed *as the law directs, according to the statute in that case made and provided.*” But the statute, *in that particular case made and provided*, directs that the magistrate shall *ascertain the sum* to be given to the *party aggrieved*. It was therefore held to be clear, that a judgment exactly pursuing the general form could not be executed, for want of *that sum* being first ascertained. *Therefore* it became necessary to enlarge upon the description in the general form, in order to meet the *point and purpose* not comprised, nor compriseable, in that form itself.

Blank left to
be filled up.

One other contingency; viz. that of a *blank* being left to be filled up, from the offence being of such a description that latitude must necessarily be given to the mode of describing it, (or such being the general words of description used, as are obviously equivalent to a blank, and designed to point out the necessity of reducing the description to some charge more specific) is provided for by numerous determinations; § the substance of all which is, in the words of Lord Kenyon in the case last cited, that “where the object

* R. v. Gardiner, 2 Str. 1098.

† R. v. Priest, 6 T. R. 538.—as also 1 Wilson. R. 315.—1 Chit. R. 147.

‡ 35 Geo. 3. c. 6.

§ R. v. Hazell, 13 E. R. 139.—R. v. James, Cald. Ca. 438.—R. v. Neild, 6 E. R. 417.

of the statute shews that the legislature could not intend that there could be a literal adherence to the form prescribed, the same accuracy of description is required, as in other cases where the description is more precise." *

The preceding observations naturally bring us to the consideration of a defect, in some convictions, nearly of an opposite quality to those we have been describing; viz. the introduction of superfluous matter, commonly denominated "*surplusage*." If a statute direct the conviction of any offence under it to be drawn up, according to an annexed form, or to the effect thereof, and the convicting justice, beside all the requisites indicated by the statute itself, unnecessarily insert other particulars beyond what are absolutely necessary, it does not vitiate the instrument, or invalidate its effect. † As a corollary from this position, it must also be noticed, that if unnecessary particulars be inserted, and inserted incorrectly as to fact, the whole insertion being actually surplusage, the incorrect item in that surplusage cannot vitiate that part of the conviction which is correct and good. Thus, where, in a conviction under a statute on a subject, respecting which a posterior statute had been passed, containing certain exceptions, but which exceptions not being necessary to be noticed at all, were actually noticed in the conviction, and that erroneously, it was holden that, being altogether surplusage, they did not invalidate the conviction. ‡

But a judgment in conviction being an *entire act*, it cannot be severed, and be bad in part, and good as to the rest; even though the several parts may be in their nature distinct. § Nor does this position militate against that immediately preceding, because, in the case of superfluous insertions, they are, as if they had not been part of the conviction, and therefore errors in *them* do not affect the

* R. v. Hazel, 13 E. R. 139.

† R. v. Jefferies, 4 T. R. 768.—Massey v. Johnson, 12 E. R. 67.

‡ R. v. Hall, 1 T. R. 320.—R. v. Picton, 2 E. R. 196.

§ R. v. Patchet, 5 E. R. 344.—1 Smith, 543.—R. v. Caffel, Str. 900.

other *parts* which are correct, nor the *whole* taken together.

Criteria of
surplusage.

The principal difficulties arise from the impracticability of fixing absolutely and incontrovertibly any definite rule or criterion, by which to determine, at once, what shall be considered words of surplusage. This is a difficulty not to be entirely subdued, because every case must stand on its own peculiar circumstance: but, beside the determinations on convictions already noticed, analogy presents some tolerably precise notions on the subject, deduced from the law of indictments. Thus, if an indictment conclude "contrary to the form of the statute," when in fact there is no statute applicable to the case, and *therefore no uncertainty can ensue*, but it is an offence at common law, this conclusion may be rejected as surplusage, and the proceedings supported.* So, if the word "*there*" be inserted, when locality makes no part of the charge, and need not be averred, it may be rejected as immaterial, and surplusage, because there probably can be no preceding matter to which it can be referable.† And generally all words that are entirely useless, or without particular sense or meaning, especially if they obstruct the intent or purpose of the indictment, ought to be struck out as surplusage.‡ But, though perhaps not absolutely necessary to be inserted at all, if any averments be introduced, so connected with the main charge, that they cannot be separated, and still leave the necessary part *a charge sufficiently made* by itself, all must be proved, and no part can be struck out as surplusage; but if they can be separated, and after such separation, the material part remain sensibly true, and grammatically correct, and containing a sufficient change in law, that which has been unnecessarily introduced may be struck out as surplusage.§

Certain expressions used in the summary forms explained.

In convictions directed by statutes, wherein summary forms are given (omitting the information, summons, and

* Cowp. 683.—5 T. R. 162.—2 Leach, 585.

† 2 Sess. Ca. 7.

‡ 1 A. Raym. 502.—2 Leach, 536, 525.

§ 2 Leach, 594.—2 Campb. 134, 584.

evidence,) the material part begins at the word "*convicted*." It is equally necessary in those, as it is in common law convictions, that certain essential ingredients should appear on the face of the instruments, viz. the jurisdiction of the convicting magistrate, the time, the place, and the charge, in such terms, as to bring the whole within the description given of the offence in the act of parliament: also, that the defendant had not any such defence as *that* may have afforded him; for, without these being evident upon the inspection of the instrument, the court cannot say, that he has incurred the penalty, or subjected himself to the forfeiture annexed. By way of example, under the bread acts, if the offence be laid where an assize has been set, it will be necessary to set forth what the assize is in that place, in order to shew what is the deficiency of weight; to state the time of purchasing, and of weighing, in order to shew that the article was found deficient within the then limited terms for trial; the species of bread, to shew that the object of the complaint does not fall within the exception.

It is very common in the summary forms inserted in statutes to find the words "*(here state the offence)*." When they occur, they are to be explained by the foregoing rule of construction, *i. e.* the offence must be described as fully, as is there insisted on; *ex. gr.*, the statute against combinations among journeymen manufacturers* gives a summary form, and inserts in a parenthesis the words just exhibited. It has been decided, that agreements among these workmen *for certain specified purposes* being the offence to be punished, it is necessary the agreement itself should be set out in the conviction, in order to shew, on the face of it, that it was an agreement *for the special purposes* denounced by the statute, *in the very terms used therein*; so that it may appear that the magistrate had authority to convict, and that the defendants had incurred the penalty.†

General directions in summary forms explained.

* 39 & 40 Geo. 3. c. 106.

† R. v. Neild, 6 E. R. 417.—R. v. Hazell, 13 E. R. 139, *ante*, p. 702. 2.

**Titles of acts
to be exactly
set forth.**

In some of these statutable forms *titles* of acts are ordered to be set forth thus, "[*here set forth the title of the act.*]" Wherever these directions occur, they must be strictly complied with; that is to say, not any word must be omitted, or changed, lest such omission, or alteration, should make the whole taken together convey a different meaning from what was the design of the act. *

**General forms
of mitigation
of penalty, &c.
&c.**

It is common to entrust the convicting magistrates with a discretionary power of mitigating penalties. The extent to which this authority may be exercised, in any instance, must depend entirely on the power given in each particular case, and statute; but, whatever it be, if exercised, it ought to be so stated in the conviction; † for otherwise it cannot appear to the court, upon Appeal, how, or in what degree, the magistrate has exercised the authority with which he was invested: thus the conviction must first adjudicate the whole penalty inflicted by the statute, and then, in a separate sentence, state to what inferior sum he has mitigated it; for otherwise, it could not appear that he had exercised his authority, in both points, according to the terms of the statute. ‡ As for example, (*After the formal part of the conviction, say,*) "And I (*or we*) do award and adjudge that the said A. B. hath forfeited for his said offence the sum of £, of lawful money of Great Britain, the one moiety thereof to the use of, and the other moiety to (*the informer, or as the statute directs,*) according to the form of the statute, &c. And I (*or we*) the said justice, seeing cause to mitigate or lessen the said penalty, do, at the request of the said defendant, according to the statute, mitigate and lessen the same to the sum of £, over and above the reasonable costs and charges of the said informer, by him laid out and expended in, and about, the said information, &c. to be distributed, and go, and be applied, one moiety thereof

* Mills v. Wilkins, 2 Salk. 609.

† Paley, 167; and App. 29.

‡ As in 39 & 40 Geo. 3. c. 89.

to, &c. (*as before*) and the other moiety to, &c. and which costs and charges of the said A. B. the said informer, I (*or we*) do allow, assess, and adjudge, to him at the sum of £ of like lawful money, according to the statute in that case made and provided."

In witness whereof, &c. &c.

Sometimes, it is said, that the magistrate, before whom the party is convicted, (and in consequence of which conviction the alternative punishments of pecuniary penalty, or imprisonment, according to the circumstances in each particular case, are annexed), "shall cause the said conviction to be made out *in manner and form following*, or in *any other form* of words, *mutatis mutandis*; which conviction shall be good and effectual to all intents and purposes, without stating the *case*, the *fact*, or the *evidence*, in *any more particular manner*." In such instances it must be even more particularly necessary to set out the *adjudication* with *particular* precision, for otherwise, without the statement of the *case*, the *facts*, or the *evidence*, it cannot appear to the court, upon the face of the conviction appealed from, which of the alternative sentences has been pronounced; what is the subject, or the object, of the Appeal; and what is the judgment they have to confirm, or to reverse.

In no small number of statutes, it is evidently the design, that, by any commitment of a defendant thereby directed, an absolute irrevocable commitment *in execution* is intended, and all Appeal from such *commitment* is excepted by some words to the following effect; "that if any person shall sink himself aggrieved by such determination, order, or warrant of any justice as aforesaid, *except an order of commitment*, every such person may appeal to the next (*or other*) session, &c." Now, under such circumstances, it has been decided, though it may be matter of surprise, that so clear a question should ever have been contested to a decision), that no Appeal lies to get rid of the commitment: for though, in truth, an Appeal from the *commitment* alone was excepted out of the Appeal clause, yet having said that there shall be no Appeal against *such an order*, the conviction and commit-

Alternative punishments.

Where Appeal excepted from a commitment in execution clause, there can be no Appeal against the conviction.

Notice of Appeal against convictions.

ment must for this purpose be understood to be one and the same thing, and no Appeal can lie.*

Supposing all the preceding rules to have been complied with by the convicting magistrate, and the conviction to have been regularly returned to the clerk of the peace by him, the compliance with matters of form, preparatory to the court taking cognizance of the question to be submitted, demands consideration. Statutes commonly allow Appeals upon certain conditions; viz. in general, "that notice be given to the magistrate whose judgment is to be the subject of Appeal, and a recognizance, either generally, or in some specific sum, entered into for prosecuting the threatened Appeal. This notice is either to be a *reasonable* one in general terms, or in specific terms, as to *time after* the conviction, and *before* the session. All such notices, however, should strictly be *in writing*; but in a case where the justice did not inform the party that it was necessary to give a notice in writing, it was holden that the session was bound to receive the Appeal, though no notice *in writing* had been given.† Notices generally to informants, of Appeals being to be prosecuted, are necessary, in common justice, in order to give them an opportunity of defending themselves by supporting the conviction. But it has long been decided that, whenever the statute, which gave the power of Appeal, required the recognizance to be *immediately* entered into upon conviction, the informant being necessarily present, such recognizance should of itself be deemed sufficient notice. When many hours, or even days might, according to the terms of the statute, elapse, before such recognizance was necessary to be entered into, notice of Appeal to the informant was considered a requisite preliminary to be proved before the matter could be called on in court, or the justices take cognizance of the conviction. The necessity for these notices, however, has been confined within a very narrow compass, in cases where they

Recognizance supersedes the necessity of notice.

* R. v. Staffordshire (justices of), 12 E. R. 572.

† R. v. Leeds (justices of), 4 T. R. 583.

are not specially directed by statute to be after a particular manner, by a recent determination in B. R.; viz. a case of the King on the prosecution of Barret v. Kent, (justices of). It was a conviction of Jan. 11, 1816, on the statute 55 Geo. 3. c. 99. for having in possession ingredients for the adulteration of bread, appealed against, and refused a hearing by the session, for want of sufficient *notice in writing*, (which, according to a rule of that particular session, must be a notice of eight days). On a *mandamus* being applied for to enter continuances, and hear the Appeal, many points were urged in order to obtain it; but the principal question was, whether a notice in writing, according to the *local rule* of the session, and that too of eight days, the statute itself not having required notice, was indispensable? It appeared by affidavit, that a recognizance was entered into *even at the time of conviction*, and verbal notice of intention to appeal, at the same time given to the prosecutor; now, all that the statute requires is, "that a recognizance shall be entered into at the time of such conviction, or *within twenty-four hours after*, with two sufficient sureties, upon condition to prosecute such Appeal with effect, and to be forthcoming to abide the judgment and determination of the session."—The court, in giving judgment, said, "That upon the expiration of twenty-four hours after the conviction, the informant might apply to the convicting magistrate for his warrant of distress to levy the penalty, and then he would receive information, whether recognizances had been entered into to appeal, or not: if no such recognizances had been taken, he would obtain his warrant of distress, of course; if there had been such recognizances taken, according to the known rule, the statute itself not having required any more specific notice, it must be deemed notice sufficient." *Mandamus granted.**

Necessity of notice still further narrowed.

On the appeal being called on, the conviction is produced, and the counsel for the appellant may make his objections, if he take any, to the technical errors in the conviction.

Course of the proceedings in court.

* MSS.

tion, on account of any of the deficiencies, or irregularities which have been already adverted to. If no objections be taken, in this stage, to the conviction itself, the case is opened, and supported by *the witnesses*. * After the evidence, in sup-

* That is to say, such witnesses as were examined by the convicting magistrate. It has been made a question, whether any *new* evidence can be gone into. It must be observed, in the first place, that an Appeal from a *conviction* is not in the nature of a new trial, but in that of a writ of error. An Appeal from an *order* may be a different matter, as from an order of removal, when it cannot be known what evidence may be brought forward; for such an order is only an *ex parte* proceeding. In the case of a conviction for an offence, the party offending has due notice of the hearing, and it is his duty to bring all his evidence. Gilb. R. 158.—3 Black. Com. 455. Superior courts *review the sentences* of inferior ones, but that only, and do not admit new evidence, not produced below, in order to examine the justice of a sentence that was not in any degree produced by it. A case containing a question somewhat analogous, and greatly illustrative, has been recently determined. By a local act the management of the poor of a certain town was vested in persons constituted a corporation for the purpose, who were empowered to make rates, and an Appeal given, as parties aggrieved, to the *town* sessions in the first place, with a further Appeal to the county sessions, if required. An Appeal against four rates was made to the town session in January, 1818, when the rates were confirmed. A further Appeal was carried to the next county session, and two *new grounds of Appeal* added in the notice. The county session refused to hear the case, and a *mandamus* was moved for in B. R. Several points were discussed, but the only one necessary for the purpose here, is to introduce the following passage from the judgment of the court: "The party here has inserted, in his second notice, two *fresh grounds of Appeal*. The impression on my mind (said Bailj, J. in giving the judgment on this occasion), is, that he must, at the county session, *be confined to the same grounds* of objection to the rate, as he took at the borough session; for the county session is in the nature of a court of review, and it is their duty only to examine *if the rate can be supported on the grounds decided upon* by the court below. If that were not so, it would be competent to the party at the borough session to state any illusory grounds of Appeal, and put forth *his whole strength by surprise* at the county session." R. v. Suffolk (Justices), 1 Barn. and Ald. R. 645.

It has, indeed, been *determined*, that *commissioners of Appeal in matters of excise* are bound to hear other witnesses than those sworn to

port of the conviction, is gone through, the appellant enters upon his case, and shews, if he can, the insufficiency of the evidence to bring him within the description, or penalties, of the statute. The court then decides, whether it be to annul, or to confirm, the conviction; in other words, "gives judgment."

What has gone before in an early page of the volume, respecting the *judgment* of the court, related to the *sentence* passed upon offenders. We now speak only of the judgment of the court of quarter session on Appeals. The authority of the court on this subject, it has been seen, arises immediately out of the Appeal, and has no other foundation; wherefore they can make no original order of removal, but are confined to the two alternatives of quashing, or confirming, *an order previously made* by two justices; and this rule, is uniform, and universal in its application* to all subjects that came before them by way of Appeal from an inferior jurisdiction. True it is, that, in some cases, the justices in quarter session have an original jurisdiction co-ordinate with that of justices *out of* quarter ses-

Judgment of
the court on
appeals.

hearing the original complaint, and admitted, in the same case, that the same rule prevails where Appeals of a *like kind* are heard at quarter sessions. R. v. Commissioners of Excise on Appeals, 3 M. & S. 183.

The statute 48 Geo. 3. c. 74. enacts, however, that the *same* witnesses, and no *other*, who were examined at the original hearing, shall be re-examined on the Appeal under that act.

On the other hand, it has been sometimes made a question, whether the court of quarter session, on an Appeal, may be competent to be satisfied with *less* evidence than was sufficient for the support of the conviction: as, *ex gr.* when a statute directs that a justice shall have authority to convict an offender on the evidence of *two* credible witnesses, whether *one* of the *two* may be sufficient to support the conviction on Appeal? The compiler is not aware, that there has been any determination on this specific question in the superior courts, but it should appear a necessary logical inference, that, if two are necessary to produce a conviction, the same number must be requisite to confirm it, and in conformity with this conclusion has been the practice, at least, of the metropolitan county sessions.

* Burr. S. C. 279.—1 Sess. Ca. 280.

sion; as in the instance of making orders of bastardy under stat. Car. 2.—correcting apprentices under 5 Eliz.—raising county rates by 55 Geo. 3. c. 51. sect. 6. & 8; but such jurisdiction is either specially and unambiguously conferred by statute, or at least inferred by the interpretation given by the courts to some such statute; but these cases do not contravene the general position above insisted on, as they are not cases of Appeal, properly so styled, though originating with inferior jurisdictions.

Reference to
ascertain facts.

And whatever judgment the justices give, must be the act of the court itself, and not by any delegation of its authority.* Even the few instances which may be produced as exceptions to this rule, on examination, will be found not to operate as such, but in effect to confirm it. Thus, where the justices in session appointed a committee from their own body to institute an enquiry, and make an examination, relative to the propriety of repairing, or rebuilding, a bridge, which had become a nuisance, the court of B. R. declared an opinion, that they were right in so doing, in order to receive their report and information relative to facts; for after all, the judgment was the judgment of the session, however such session might adopt the opinion of the individual justices who had made their report. †

Reference of
costs.

The same may be said respecting the common practice of referring the actual amount of costs incurred, to be ascertained by the clerk of the peace; for the award of costs themselves is the judgment of the court, and the *quantum* is a mere investigation of items ancillary to that judgment. But the court cannot award costs, to be *taxed afterward* by the clerk of the peace, for that would be in truth to delegate their power of final judgment over the amount of the costs to the officer of their court. ‡ So where by *consent of parties* the consideration of an Appeal against a poor rate be referred to certain justices out of session, and the justices in session afterward adopt the opinion of the other

General refer-
ence by con-
sent.

* 16 Vin. 415.

† 9 E. R. 15.—13 E. R. 57.

‡ 5 T. R. 279.

justices, and give judgment accordingly, this is not a delegation of the authority of the court, but a previous adjustment by consent of the subject, *to be determined finally by the court.* *

Whether costs may be awarded by the session on judgment at all, or not, must depend upon the statutes respectively, on which Appeals are founded. Many of them expressly confer the power of awarding costs, but it is not necessarily incidental to their jurisdiction; as this however, is more properly a subject of consideration in the concluding chapter, where the *consequences*, rather than the *concomitants*, of proceedings at quarter sessions are particularly treated of, we pass on to other matters more *immediately* connected with the hearing of the Appeal, and the main points respecting the judgment itself.

Enough has been said respecting an Appeal proceeding on the merits, in the regular course, to judgment. But it may be, for some of the errors before exemplified, or alluded to, that an Appeal may be dismissed for informality; or when a statute give an Appeal conditionally, on a certain notice being given, or a certain recognizance being entered into, or a compliance with some other specific preliminary, it is necessary that the premised conditions should have been complied with; for if there have been any failure in that point, the Appeal must be *dismissed* for informality; and such dismissal is conclusive, the right will be gone, and cannot afterward be recovered. †

In the case of Appeals limited to the *next session*, if the appellant rely on an objection of form, and independent of the merits, procure the Appeal to be quashed *on that ground*, he cannot (even though the court of B. R. should have set aside the order of session, and set up the conviction again), go to the session again, and have the question heard there *upon the merits*. ‡

But an Appeal may be adjourned by the court for future hearing; even *until* a subsequent session, (though not beyond

* Cald. Ca. 30.

† R. v. Yorkshire, West Riding (justices of), 2 T. R. 776.

‡ R. v. Allen, 15 E. R. 346.

it, as has been before observed), on many grounds. The power of adjournment must be incident to the court for attaining the ends of justice, and so obvious is this position, that it has been decided, that the words in a statute, directing that “the justices of the said session shall determine the matter,” do not supersede this inherent authority of adjournment.* Unavoidable surprise of any kind upon the party as to any part of the subject appealed against; the absence of witnesses; any necessity for enquiry, suggested either by the counsel for the parties, or for the information of the court; may all be sufficient reasons for adjournment; and it is to be understood that, an adjournment, *ex vi termini*, implies that every thing during the time of such adjournment remains *in statu quo*; viz. that no advantage or disadvantage, to the parties, as to notices, or other matters generally effected by efflux of time, is worked by such postponement of hearing: as where a statute giving an Appeal to the session *within a certain number of months after the cause of complaint shall arise*, direct the justices at the *said session* to hear and determine the matters of such Appeal, &c.; yet, as has been observed, they have an incidental power of adjourning it upon lawful cause;—of the sufficiency of which cause *they are the sole judges*. But as, where the session is adjourned, the style of it must not run “at such session held by adjournment,” the original meeting of the session ought to be set forth, and that it was “continued from thence to such further time by adjournment; † so any record of proceedings had at it must follow the same course.

Power of adjournment,
how restricted.

But though the power of adjournment be inherent in the sessions to the purposes of justice, and their own convenience, that power can only be exercised on Appeals lawfully and regularly before them, by all the previous conditions (whatever they may be) having been complied with. Thus, if for want of any notice, or other preliminary step, made a condition by the statute, the Appeal

* R. v. Wiltshire (justices of), 13 E. R. 352.

† 2 Str. 832, 863.

could not be regularly entered, the court can have no right to receive it, or take cognizance of it, and therefore cannot adjourn the hearing; for there is nothing on which the adjournment can be founded, and such a proceeding would amount to the court acquiring a jurisdiction by an act of its own, grounded on a matter not before them, and of which they had no cognizance.*

PRECEDENTS OF ORDERS, AND CONVICTIONS. †

ORDERS OF JUSTICES—(*Apprentices*).

County of } Whereas complaint hath been made Order by two justices for the discharge of an apprentice, &c. on complaint of the master, by 20 Geo. 2. c. 19.
(to wit.) } before us,, two of his Majesty's
 justices of the peace, in and for the said county of,
 upon the oath of W. M., of, in the said county,
 tailor, that A. R., apprentice of the said W. M., hath in
 his service as an apprentice, committed divers misdemeanors against him the said W. M., his master, and in

* R. v. Oxfordshire (justices of), 1 M. & S. 448.

† Sufficient observations have been already offered respecting Appeals from Orders and Convictions generally, as well as on the characteristic differences between those two species of instruments. On the particular precedents which follow, it is enough to add, that the same views and purpose have suggested the selection, which influenced that of the Indictments; viz. a design to make it as comprehensive as the prescribed limits would permit; but, at the same time, to confine it to such, as promised to be most *generally* acceptable, from being most *commonly* useful. In the execution of this purpose it may be right to remark, that, the object of the work being to facilitate, and to expedite, the proceedings of justices at *all descriptions* of Sessions of the Peace, that with respect to *orders*, no particular kinds have been systematically excluded, although those from which Appeals lie to the Quarter Sessions, in the ordinary course of business, have been chiefly introduced: and with respect to *convictions*, some erroneous ones, which have been quashed, are exhibited, as more effectual toward pointing out difficulties, and preventing justices from falling into error, than even a collection of uniformly correct ones would have proved.

particular (*as the case is*). And whereas we, the said justices, after having duly examined into the proofs and truth of the said complaint, and heard the allegations of both parties, have, upon due consideration thereof, determined and adjudged that the said A. R. is guilty of the misdemeanors so charged against him as aforesaid; we do therefore hereby make an order for the discharge of the said A. R., and do hereby discharge the said A. R. from his apprenticeship to the said W. M., any thing in any indenture or indentures of apprenticeship between them, or otherwise, to the contrary notwithstanding. Given under our hands and seals, &c.

(As above, *mutatis mutandis*, to the conclusion. Then add,) And we do hereby further order, that the said W. M. shall, *upon due notice hereof*, * forthwith deliver up to the

Order for discharge on complaint of parish apprentice, by 32 Geo. 3. c. 57.

* An Appeal to the next session is allowed by the 12th section of this act, against the Order of discharge by 20 Geo. 2.; as also against the Order of discharge and payment of money by this 32 Geo. 3. on notice thereof being given within seven days of the service of the Order. If no such notice be given, nor the Order obeyed, a warrant of distress is to issue; and if notice of Appeal be given, but not supported, forty shillings are to be added to the expences of the distress.

And by 33 Geo. 3. c. 55. "it shall be lawful for two justices, at any petty, or special, sessions, upon complaint made to them upon oath, by, or on the behalf of, any apprentice to any trade or business whatsoever, *whether bound apprentice by any parish or township, or otherwise (provided not more than 10l. be paid upon the binding of such apprentice)* against his master if any ill-usage (such master having been duly summoned to appear and answer such complaint), to impose upon conviction any reasonable fine not exceeding 40s. as a punishment for such ill-usage: and by warrant under their hands and seals to direct such fine, if not paid, to be levied by distress and sale of the goods of the offender, rendering the overplus, after deducting the amount of such fine, and the charges of distress and sale: and for want of distress, such person shall be committed to the house of correction for not exceeding ten days. And such fine so imposed on any such master, shall, at the discretion of the justices, be either applied for the relief of the poor of the parish where the offender shall reside, or otherwise be applied for the use of such apprentice, for, or towards a recompense for, the injury sustained by such ill-usage. But if any person shall be aggrieved by the imposition of such fine, or by any order or warrant of distress for levying

said A. R., his said late apprentice, his cloaths and wearing apparel, and that he shall moreover immediately pay to the churchwardens and overseers of the poor of the parish of, in the said county, to which parish the said A. R. belongs, some, or one of them, the sum of (*not more than 10l.*) to be applied by them, some, or one of them, for the again binding out such apprentice, or otherwise, for his benefit, as to us shall seem meet, under our order. Given under our hands and seals, &c.

County of } Whereas D. W. within named, late
 (to wit.) } of the parish of, in the said
 county, died on the day of, being within
 three calendar months now last past; we, two of his Ma-
 jesty's justices of the peace for the county aforesaid, whose
 names are hereunto subscribed, on the application, and at
 the request of A. W., widow, (*or as the case may be*),
 of the said D. W., living with, and being part of the
 family of the said D. W. at the time of his death, do
 hereby order and direct, that A. B., the apprentice within
 named, who was in the service and actual employment of
 the said D. W. at the time of his death, shall serve the
 said A. W. as such apprentice for the residue of the term
 of such apprenticeship within mentioned, according to the
 provisions of an act passed in the thirty-second year of the
 reign of King George the Third, intituled, an act for the
 further regulation of parish apprentices. * Witness our
 hands this day of

Order by two
 justices for
 continuance of
 apprentice
 with the widow
 (or other re-
 presentative)
 of master by
 32 Geo. 3.

the same, or by the determination of the said justices, or by any act to be done in the execution of such warrant, he may appeal to the next general or quarter sessions, of which Appeal ten days' notice shall be given.

* See last page, in notes. The foregoing order provides for the apprentice on the emergency of the master's dying. The 56 Geo. 3. c. 139. among many other provisions, extends to justices' power, by a similar order, to assign over, or to discharge, parish apprentices, on the removal of their masters' residences respectively into another country, or more than forty miles from the place wherein they resided at the time of the binding; with power to order a return of premium, or any part thereof. The statute pro-

I, the above named A. W. do hereby declare, that the above order is made at my request, and that I do accept the said A. B. as my apprentice, according to the terms and covenants contained in the said indenture, and according to the provisions of the said act. Witness my hand the day and year above written.

ORDERS OF JUSTICES—(*Bastardy*).

Order of affiliation and maintenance of a bastard child, according to 49 Geo. 3. c. 68.

County of } The order of R. J. and S. T. esquires,
 (*to wit.*) } two of his Majesty's justices of the
 peace in and for the said county, one whereof is of the
 quorum, and both residing next unto the limits where the
 parish church is, within the parish of, in the said
 county, made the day of in the year
 of, concerning a male bastard child, lately born
 in the parish of aforesaid, of the body of M. D.,
 single woman: whereas it hath appeared to us the said
 justices, as well upon the complaint of the church-wardens
 and overseers of the poor of the said parish of, as
 upon the oath of the said M. D., that she the said M. D.,
 on the day of now last past, was delivered
 of a male bastard child at, in the parish of,
 in the said county, and that the said bastard child in now
 living, and chargeable to the said parish of, and
 likely so to continue; and further, that P. E. of,
 in the said county, did beget the said bastard child on the
 body of her the said M. D., and whereas the said P. E.
 hath appeared before us, in pursuance of our summons for
 that purpose, but hath not shewed any sufficient cause why
 he the said P. E. shall not be adjudged the reputed father
 of the said bastard child, (*or*, and whereas it hath been duly

ceeds to inflict penalties for discharging such apprentices, under the circumstances provided for, by any other means than those pointed out, and gives a summary conviction for disobedience, with power of Appeal within three months, giving twenty-one days' notice in writing, and if to any conviction entering into recognizance to prosecute. Appeals to be to the county sessions, who shall give costs at their discretion.

proved to us upon oath, that the said P. E. hath been duly summoned to appear before us the said justices, to the end we might examine into the circumstances of the premises and whereas he the said P. E. hath neglected to appear before us, according to the said summons); we therefore upon due examination into the circumstances of the premises, as well upon the oath of the said M. D. as otherwise, do hereby adjudge him the said P. E. to be the reputed father of the said bastard child; and thereupon we do order, as well for the better relief of the said parish of, as for the maintenance and support of the said bastard child, that the said P. E. shall and do forthwith upon notice of this our Order, pay, or cause to be paid, to the said church-wardens and overseers of the poor of the said parish of, or to some or one of them, the sum of for and towards the expences of the lying-in of the said M. D., and the maintenance of the said bastard child to the time of making this our order. *

* Until the statute 49 Geo. 3. the only remedy for a disobedience of the Order of Justices, as directed by 18 Eliz., was by indictment; but this statute of 49 Geo. 3. has superadded a summary remedy by complaint to one Justice by the overseers of the poor of the parish damned, as follows:—

“ If any reputed father, or any mother of such bastard child, or children, on whom any order of filiation or maintenance of such child, or children, shall have been made by the court of quarter sessions, or which shall have been made by two justices of the peace, and confirmed by the court of quarter sessions, or against which no Appeal shall have been made, shall neglect or refuse to pay any sum or sums of money, which he or she shall have been ordered to pay towards the maintenance of any such bastard child, or children, by any such Order, it shall be lawful for any justice of the peace of the county, &c. in which such reputed father, or such mother, shall happen to be; and the said justice is hereby required upon complaint made to him by any one of the overseers of any parish, &c. liable to the maintenance or support of such bastard child or children, or where such bastard child or children shall then be; and upon proof, on oath, of such order for the payment of such sum or sums of money being unpaid, and of a demand of such payment having been made, and a refusal to pay the same, or that such reputed father, or such mother,

the poor of the parish of aforesaid, as otherwise, that the reasonable costs of apprehending and securing the said P. E., together with the costs of this our Order, do amount to the sum of ..l. ..s. ..d., we the said justices do therefore thereupon order that the said P. E. shall and do forthwith likewise pay; or cause to be paid, the said last-mentioned sum of ..l. ..s. ..d. (for indemnifying of the said parish of against the said last-mentioned expences) to the said churchwardens and overseers of the said parish of, or to some one of them. And we do hereby likewise further order that the said P. E. shall likewise pay or cause to be paid to the churchwardens and overseers of the poor of the said parish of for the time being, or to some or one of them, the sum of weekly, and every week, from the day of the date of this present order, for and towards the keeping, sustentation, and maintenance of the said bastard child, for and during so long time as the said bastard child shall be chargeable to the said parish of And we do further order that the said M. D. shall also pay or cause to be paid to the said church-wardens and overseers of the poor of the said parish of, for the time being, or to some or one of them, the sum of weekly, and every week, so long as the said bastard child shall be chargeable to the

ditioned to try such appeal, and abide the judgment and order of, and pay such costs as shall be awarded by, the justices at such quarter sessions; which said justices at their said sessions, upon proof of such notice being given, and of entering into such recognizance as aforesaid, shall, and they are hereby required to proceed in, hear, and determine the causes and matters of all such appeals, and shall give such relief and costs to the parties appealing, or appealed against, as they in their discretion shall judge proper; and such judgments and orders therein made shall be final, binding, and conclusive to all parties concerned, and to all interests and purposes whatsoever.

1 By §7. "*no appeal, in any case, relating to bastardy, shall be brought, received, or heard, at the said quarter sessions, unless such notice shall have been given, and such recognizance shall have been entered into in the manner aforesaid.*"

said parish of, in case she shall not nurse and take care of the said child herself. Given under our hands and seals the day and year first above written.

ORDERS OF JUSTICES—(*Distress*).

Order of two justices for the fraudulent removal of goods by a tenant,* on 11 Geo. 2. c. 19. from Williams.

County of } Be it remembered, that on the 25th
(to wit.) } day of September, in the year
of our Sovereign Lord the now King, at in the county
of, A. B. of aforesaid, came before us F. J.
and S. J., esquires, two of his Majesty's justices, assigned
to keep the peace in and for the said county, and also to
hear and determine divers felonies, trespasses, and other
misdemeanors committed in the said county, and residing

* Different opinions are entertained respecting the necessity of setting out the evidence in *Orders* on this subject, in the same manner as in *Convictions*. The most extraordinary circumstance however is, that authors of opposite opinions on the subject profess to derive those opposite opinions from the same source. In Williams's *Justice*, a book of good authority, (article *Distress*,) we find the following note subjoined to the form of the *Order* here transcribed. "The evidence is not set forth in former precedents, upon the presumption that this is no more than an order, and that therefore such statement is unnecessary, the court not being so shut as to orders, if they are in substance good, as they are in convictions, in which a statement of the evidence is indispensable, but as it is grounded upon a penal statute, and the forfeiture cannot be adjudged but upon a previous determination, that the party is guilty of the offence charged, it seems rather to be of the nature of a conviction, and therefore it is advisable (certainly safest) to set out the evidence. In fact, in a late case, *the court were of opinion*, that the evidence ought to be stated, and that the omission thereof is fatal." *R. v. Morgan, Cald. Ca.* 158.

On the other hand, Paley, in his *Treatise on Convictions*, (on the same subject, *distress*,) says, "On a conviction the evidence must be set out particularly (on the authority of,) *R. v. Morgan, Cald. Ca.* 158; but in an *Order* the evidence need not. This concise mode (see next Precedent,) was held sufficient. *R. v. Middehurst. Burr. R.* 369." Both precedents, from the two authorities respectively, are here exhibited.

near to the close from whence the cow herein after mentioned was conveyed away, we, or either of us not being interested in that close, and then and there exhibited before us a certain complaint in writing against O. O. of aforesaid, labourer, by which he gave us to understand and be informed, that he the said A. B., on the day of, in the year of our Lord, at aforesaid, had demised to one E. O. a certain close of pasture called, containing by estimation acres, with the appurtenances, situate, lying, and being in aforesaid, in a certain street there called street, to hold the same to the said E. O., from thenceforth for one whole year, from thence next ensuing, and fully to be complete and ended, at and under the yearly rent of, to be paid by the said E. O. to the said A. B., at two payments in the year, to wit, upon the day of, and upon the day of, by equal portions; the first payment whereof was to begin and be made on the day of, then next following: and that by virtue of that demise, the said E. O. entered into the said close, and was possessed thereof; and that on the day of, now last past, the sum of of the rent aforesaid, was and became due and in arrear to the said A. B. from the said E. O. for half a year, ended at that day in the year aforesaid, and yet is unpaid; and that after the said sum of, of the rent aforesaid, so became due and in arrear to the said A. B., and whilst the same was due to him and unpaid, to wit, on the day of now last past, one brindled coloured cow of the said E. O., under the value of 50*l.* that is to say, of the price of, was depasturing and feeding upon the said demised premises, and was then subject and liable to be taken as a distress for the said arrear of rent so due and payable, and that the said E. O., to prevent the said A. B. from distraining the said cow, for the said arrear of rent so reserved, due and payable as aforesaid, afterwards, that is to say, on the same day and year last-mentioned, fraudulently and clandestinely conveyed

away the said cow off and from the said demised premises, and hath ever since that time concealed the same; and that one O. O., of aforesaid, labourer, well knowing the premises, did wilfully and knowingly aid and assist the said E. O.,* in the fraudulent conveying away the said cow off and from the said demised premises, and in concealing the same; and *thereupon afterwards*, that is to say, on the 6th day of October in the same year, at aforesaid, in the county aforesaid, the said E. O. being for that purpose duly summoned, cometh before us the said justices in his proper person to make answer unto the said complaint; and C. W. and F. W., being credible witnesses in that behalf, likewise now come before us, and are here now present, and take their corporal oaths, and each of them now here taketh his corporal oath upon the Holy Gospel of God, to speak the truth, the whole truth, and nothing but the truth, before us the said justices, of and concerning the premises in the said complaint specified; we the said justices having sufficient power and competent authority to administer the said oaths in that behalf; and the said C. W. and F. W. are now here severally examined before us upon their said oaths, and each of them is examined before us upon his oath, of and concerning the matter of the said complaint; and the said C. W. being so examined by us the said justices, does on his said oath for himself depose, swear, and say, in the presence and hearing of the said E. O., that [*here set forth the evidence,*] and the said F. W. being also examined by us the said justices, in the manner aforesaid, does on his said oath also depose, swear, and say, in the presence and hearing of the said E. O., that [*here also set forth the evidence*]; and the said E. O. now present before us the said justices in his proper person, to answer the said complaint; and the said complaint, and the examination of the said C. W. and F. W. of and concerning the premises, and the evidence of the said C. W. and F. W. thereupon given, upon their said oaths in manner aforesaid, being

* See notes, *post*, p. 726, 727.

heard and fully understood by the said E. O., he the said E. O. is asked by us the said justices, whether he hath or knoweth any thing to say for himself, why he the said E. O. ought not to be convicted of the premises above laid to his charge; and because upon hearing and fully understanding the said complaint, and the evidence of the said C. W. and F. W. of and concerning the premises aforesaid, and upon hearing and fully understanding all and singular the matters and things by the said E. O. alledged in his defence, it appears manifest to us, that the said E. O. is guilty of the premises above laid to his charge, in manner and form as by the said complaint is above alledged; and because upon inquiry made by us the said justices on the oath of the said C. W. in that behalf likewise, in due manner taken before us the said justices, we having full power and competent authority to administer that oath, it manifestly appears to us the said justices, that the said cow, in the said complaint mentioned, at the time of conveying the same away, as in the said complaint is mentioned, was of the value of, of good and lawful money of this realm; therefore it is considered by us the said justices, that the said E. O. be, and he is hereby convicted of the premises in the said complaint so as aforesaid laid to his charge; and we do adjudge and order the said E. O. to pay to the said A. B. the sum of, of lawful money of Great Britain, on the day of, now next ensuing, being double the value of the said cow in the said complaint mentioned, according to the form of the statute in that case made and provided. Given under our hands and seals, at, &c.

County of } Whereas T. W. of, &c. as bailiff or
 (to wit.) } agent to Sir T. F. for and on behalf of
 the said Sir T. F. did, upon or about the day of, Another on same subject from Paley.
 &c. exhibit to and before us, P. W. and R. L. Esquires, Information by bailiff of landlord.
 two of his Majesty's Justices of the Peace in and for the
 said county, and who reside near to the township of Mar-
 ton and Over, in the said county, and who are not inte-

For assisting
to carry off
or conceal
goods, &c.

rested in the messuage and tenements, lands and hereditaments, hereinafter mentioned, his complaint and information in writing against T. Middlehurst, of W. in the township of Over aforesaid, in the said county of C. yeoman, thereby setting forth, that John Chesterson, late of Marton aforesaid husbandman, had for several years last past held and occupied, &c. [*stating the tenency and arrears as in the last,*] and further setteth forth, that the said T. Middlehurst, did, upon or about the 11th day of that instant November, and now last past, wilfully and knowingly aid or assist * in fraudulently removing and conveying away from off the said premises so held by the said John Chesterson, five cows, being the proper goods and chattels of the said John Chesterson, or † in concealing thereof, with intent to prevent the said cows being distrained for the said arrear of rent, and to defraud the said Sir T. F. of such arrears so due to him as aforesaid, which said five cows were under the value of 50*l.*,‡ and of the value of 21*l.*—After a regular summons

* If any tenant shall fraudulently remove and convey away his goods or chattels, and if any person shall wilfully and knowingly aid or assist him in the same, or in concealing the same, every person so offending; shall forfeit to the landlord double the value of such goods, to be recovered in a court of record at *Wesminster*. 11 Geo. 2. c. 19. § 3.

† In this case two questions arose on appeal. It was moved to quash the orders: because 1. That it is not described sufficiently what the offence is: 2. That the charge was in the disjunctive, that he assisted the tenant in removing *or* concealing the goods.

By L. *Mansfield*, Ch. J. “Upon indictments it has been determined, that an alternative charge is not good (as, forged, *or* caused to be forged;) though one only need be proved, if laid conjunctively (as forged *and* caused to be forged;) but I do not see the reason of it: but this is an *order*, and being good in substance, needs not be literally so strict.—And by the court, the rule to shew cause was discharged, and consequently both orders affirmed. 1 *Burr.* 399.

And in order to justify the landlord in seizing under this statute, the removal must have taken place after the rent became due, and must have been clandestine. 3 *Espin. N. P.* 16, 2.

‡ But if the goods and chattels so fraudulently carried off or concealed shall not exceed the value of 50*l.* the landlord or his agent may exhibit

and appearance of the Defendant, the order proceeds, "Now we the said justices having, agreeable to such summons, in the presence of the said T. Middlehurst, examined divers proper witnesses upon oath touching the said complaint and information, and the matter therein contained, and having also inquired in like manner upon oath the value of the said cows, and upon due consideration had in the premises, we the said Justices hereby adjudge, that the said T. Middlehurst is guilty of the offence with which he is charged as aforesaid." The order then adjudges the value of the cows, and that the said T. M. "within three days after notice of this order, conviction, or judgment, do pay to the said T. W. as agent or bailiff of the said Sir T. F. and for the use of the said Sir T. F. the sum of*l.*, being double the value of the said five cows so fraudulently removed or concealed as aforesaid."

complaint in writing before two justices of the peace of the same county or division, residing near the place where such goods and chattels were removed, or near the place where the same were found, not being interested in the lands or tenements where such goods were removed, who may summon the parties concerned, examine the fact, and all proper witnesses, upon oath, (or if it is a quaker, upon affirmation required by law) and in a summary way determine whether such person or persons be guilty of the offence with which he or they are charged, and to inquire in like manner of the value of such goods and chattels, and upon full proof of the offence, by order under their hands and seals, the said justices shall adjudge the offender or offenders to pay double the value of the said goods and chattels to such landlord, his bailiff, *servant*, or agent, at such time as the said justices shall appoint, and if the offender or offenders having notice of such order, shall refuse or neglect so to do, they shall, by their warrant, levy the same by distress, and for want of such distress, may commit the offender or offenders to the house of correction, there to be kept to hard labour, without bail or mainprize, for the space of six months, unless the money so ordered to be paid as aforesaid shall be sooner satisfied. § 4.

But the party may appeal to the next general or quarter-sessions, who may determine such appeal, and give costs to either party. § 5.

ORDERS OF JUSTICES—(*Friendly Societies*).

Order for re-
admission of
a member
illegally ex-
cluded, and for
payment of ar-
rears of allow-
ance unjustly
withheld.

To A. B. and C. D.* stewards of the Friendly Society called the "True Blue Club," holden at the sign of the Royal Oak, situate in the parish of St. James, in the town of, in the county of

County of } "Whereas H. O., of the parish of St.
(to wit.) } James, in the said county of
Cordwainer, in his proper person on the day of . . .
in the year of the reign of our sovereign Lord
George the by the grace of God of the united king-
dom of Great Britain and Ireland, king, defender of the
faith, at aforesaid, in the county aforesaid, made an
information and complaint upon oath before us P. Q. esq.
and the Rev. R. S. clerk, two of the justices of our Lord the
King assigned to keep the peace of our said Lord the King
within the said county of, and also to hear and deter-
mine divers felonies, trespasses, and other misdemeanors
within the said county committed, whose names are here-
unto set, and seals affixed, and residing at aforesaid,
where the said society was established, and which oath we
the said justices did then and there administer to him, by
which said information and complaint on oath aforesaid,
the said H. O. deposed and said that he the said H. O.
then was a member of a certain friendly society, called "The
True Blue Club," held at the sign of the Royal Oak situate
in aforesaid, in the county aforesaid, (the rules, or-

* By 49 Geo. 3. c. 125. § 4, all orders made by justices by virtue of the said act or this act, shall be made upon the presidents, wardens, stewards, treasurers, trustees, or other principal officers of the society to which such complaint shall relate, *or any one or more of them*, or any of them, at the discretion of the said justices, *in the proper name or names of such officer or officers*; and every such order may be served upon the officer or officers *so named* therein, either by delivering a copy of the said order to such officer or officers, or one of them, or leaving the same at his last or usual place of abode; and such service shall be binding on such officer or officers, and on the society to which such officer or officers shall belong.

ders, and regulations of which said society had been exhibited in writing to the justices of our said Lord the King, assigned to keep the peace of our said Lord the King, within the said county of at the general quarter-sessions of the peace holden in and for the said county, and by the said justices at their said sessions after due examination allowed and confirmed, and afterwards signed by the clerk of the peace at the said sessions, pursuant to the statute in that case made and provided.) And that the said H. O. had been a member of the said society for the space of twelve years and upwards, and that he had for two years then past, or thereabouts, been lame, and thereby rendered incapable of working at his calling, that he did then continue so, and that he had during the time he was so lame received an allowance of five shillings weekly and every week from the said society, until the first day of then and now last, on he club night of which month the members of the said society refused to pay him *any further allowance*, declined accepting his contribution money, and *unjustly excluded* him from the said society, and thereupon he prayed that justice might be done to him in the premises. And whereas, on the day of, in the year aforesaid, at the, in aforesaid, in the county aforesaid, A. B. and C. D. stewards of the said society, pursuant to our summons issued for that purpose, as also G. H., K. L., and M. N. trustees of the said society,* with X. Y. and U. W. members of the same, appeared before us the said P. Q. and R. S., and the said H. O. being then and there present, we the justices aforesaid did then and there determine the matter of the said complaint according to the true purport, intent, and meaning of the rules, orders, articles, and regulations of such society, confirmed by the justices in session according to the directions of the statutes in that case made and provided.

And thereupon we do order and *adjudge* by virtue of the

* See 59 Geo. 3. c. 128. § 4.

said statutes that the said stewards do *herewith* pay * to the said H. O. the sum of twenty shillings, being the sum due to him for four weeks' allowance, ending on the day of last, together with five shillings costs; And we the justices aforesaid do further order and adjudge that the said H. O. be re-admitted into the said society, and into all the benefits and advantages arising therefrom, and we do order and require you the stewards and members of the said society to re-admit the said H. O. into the said society, and into all the benefits and advantages arising therefrom

* By 49 Geo. 3. c. 128. § 3. "if complaint shall be made to two such justices by any member, of relief having been refused to him by any such society, to which he shall be lawfully entitled according to the rules of the society, the said two justices residing within the county, &c. within which such society shall be held, shall summon the person, being an officer of the society against whom such complaint shall be made, and upon his appearance, or in default thereof, upon due proof upon oath of the service of such summons, shall proceed to hear and determine the same, and award such sum of money to be *forthwith* paid to the said complainant as shall appear to them to be due on such award as aforesaid, together with such a sum for costs, not exceeding ten shillings, as to them shall seem meet; and if the said sums shall not be forthwith, and in the presence of such justice or justices, paid to such complainant, or to some person there attending on his behalf, then such justices shall by warrant under their hands and seals, cause such sum and costs as aforesaid, to be levied by distress, of the monies, goods, chattels, securities, and effects belonging to the said society, together with all further costs and charges attending such distress and sale, returning the overplus (if any) to the said society, or to one of the treasurers or trustees thereof, and in default of such distress being found, then to be levied by distress and sale of the proper goods of the officer or officers of the said society so neglecting or refusing as aforesaid, together with such further costs and charges as aforesaid, returning the overplus (if any) to the owner, and so from time to time, as often as complaint shall be made of the non-payment of any sum or sums directed by such order to be paid as aforesaid. Provided always, that whatever sums shall be paid by any such officer or officers, or levied on his or their proper goods, in pursuance of the order of any justices as aforesaid, shall be repaid, with all damages accruing to him or them, out of the first monies which shall thereafter be received by such society.

accordingly.* Given under our hands and seals at
aforesaid in the county aforesaid the day of
in the said year of the reign of our sovereign Lord
George the by the grace of God of the united king-
dom of Great Britain and Ireland King, defender of the
faith, and in the year of our Lord one thousand eight
hundred and

CONVICTIONS—(Alehouses).

County of Glamorgan } Be it remembered, that on the Conviction of
 (to wit.) } 14th day of October, in the six- a publican for
 teen year of the reign of our Sovereign Lord George the suffering tip-
 Third, by the grace of God, &c. and in the year of our pling. †
 Lord 1776, T. Johns, keeper of the alehouse called and
 known by the name of the Cross-keys, in the town of L., in
 the parish of L., in the said county of Glamorgan, is, to wit,
 on this 14th day of October aforesaid, at L. aforesaid, found
 by me R. Richards, clerk, one of the justices of our said
 Lord the King, assigned to keep the peace of our said Lord
 the King in and for the said county, and also to hear and
 determine divers felonies, trespasses, and other misdemea-

* And by § 5, every order, adjudication, or award of any justice or justices under this act, shall be *final and conclusive to all intents and purposes*, and shall not be removed or removeable into any court of law, or restrained or restrainable by the injunction of any court of equity.

† The authority confided to justices respecting the licensing of publicans, and the punishment of offences arising out of, or connected with, those licenses, forms so complicated a subject, (if viewed in all its bearings) by a multiplicity of successive statutes; which, if not absolutely *conflicting*, are at least so various and diversified in their provisions, as not to be easily interpreted, or readily reconciled; that the few explanatory notes, necessary for elucidating that part of the subject which relates immediately to convictions, or to appeals from them, must, from the necessity of contracted limits, be rather calculated to excite, than to satisfy, inquiry. The principal provisions, however, so far as they relate to the part of the system now under review, are introduced as the following convictions call for them respectively.

nors done and committed in the said county, upon my view, permitting and suffering the following persons, to wit, A. B., C. D., &c. to remain and continue drinking or tippling in his said alehouse, between the hours of eleven and twelve in the evening of this 14th day of October, against the form of the statute in that case made and provided, they the said persons *not being invited, nor either of them being invited, by any traveller, and accompanying him only during his necessary abode there, and neither of them being a labouring or handicraftsman at his dinner, and neither of them being a labourer or workman who, for the following his work in the said town of L. sojourns, lodges, or victuals in the said alehouse, and neither of them being at the time for urgent and necessary occasions allowed by two of his Majesty's justices of the peace to tipple there ; ** and the said T. Johns

* By 1 Jac. 1. c. 9. § 2. if any innkeeper, victualler, or alehouse-keeper, (or the keepers of taverns, and such as do sell wine in their houses, and do also keep inns, or victualling in their houses, 1 Car. 1. c. 4. § 2.) shall permit any person dwelling (or not dwelling, 1 Car. 1. c. 4. § 1.) in any city, town corporate, market town, village, or hamlet, where such inn, alehouse, or tippling-house is, to remain drinking or tippling in the said inn, *other than such as shall be invited by any traveller, and shall accompany him only during his abode there, and other than labouring and handicraftsmen in cities and towns corporate, and market towns upon the usual working days for one hour at dinner time, to take their diet in an alehouse, and other than labourers and workmen, which, for the following of their work by the day, or by the great, in any city, town, village, or hamlet, in any inn, alehouse, or tippling-house, shall, for the time of their continuing in work there, lodge in any inn or place aforesaid, and other than for urgent occasions to be allowed by two justices ; every such keeper, victualler, or alehouse-keeper, shall forfeit 10s. to the poor ; the offence being viewed by any mayor, bailiff, or justice, (or proved by the oath of one witness, or confession of the person offending. 21 Jac. 1. c. 7. § 1.)*

The same to be levied by the constables or churchwardens by way of distress ; and, for want of sufficient distress, the party offending to be by such mayor or justice committed to the common gaol, there to remain until the penalty be truly paid. 1 Jac. 1. c. 9. § 3.

Also, the said offence may be *inquired of and presented before*

being now on the aforesaid day before me the said justice, and by me charged with the said offence, the said T. Johns is asked by me why he doth permit or suffer the persons aforesaid to continue drinking or tippling in his said alehouse, but the said T. Johns hath nothing to say, nor can he say any thing in his own defence touching or concerning

justices of assize, justices of the peace in their sessions, mayors of corporations, and in the leet. 4 J. c. 5. § 5.

These two statutes were, however, only temporary; wherefore, 21 Jac. 1. c. 7. was enacted, by which they were made perpetual, with additional provisions respecting the evidence on which the conviction may be founded, and other matters not necessary to be noticed here, and concluding with the following enactment, which is material to be considered, inasmuch as it leads to a difficulty respecting an appeal or other proceeding: "If any person, being an alehouse-keeper, shall, at any time hereafter, be lawfully convicted for any offence against *any the branches* of either of the said two former statutes, according to the alterations and additions therein contained, or against the true meaning of this statute, *every person so convicted, shall, for the space of three years next ensuing, be utterly disabled from keeping any such alehouse.*"

That there is no appeal from the conviction of a justice for the offence of suffering tippling, by these statutes, is manifest; but the effect of these concluding words of this 4th section of this statute of 21 Jac. 1. is worthy of consideration; viz. whether by the conviction of *one* justice for the offence of tippling, the license of the publican granted by *two* justices, under the authority of *subsequent* statutes, (especially 35 Geo. 3. c. 113. & 48 Geo. 3. c. 143.) become *ipso facto* void, (so that without further proceedings of any kind had to substantiate the forfeiture of the license, on mere *information for selling ale or spirits, as without license*, and conviction *thereon*, the penalties can be inflicted) or whether only *voidable*, and subject to further investigation and judgment; also whether, if voidable only, and no further steps have been taken to put that conviction in force, an appeal to the subsequent conviction *for selling without a license*, which is given by § 12. of the 35 Geo. 3. (adopting the form previously given by 26 Geo. 2.) and recognized by 48 Geo. 3. will embrace the whole question. It is not unworthy of notice, that by § 7. of 26 Geo. 2. it is directed that where it shall appear to a justice, on information, that a publican hath done any act to forfeit his recognizance, such justice shall summon him to the quarter session, that a jury may find whether such recognizance be forfeited, or not.

the premises, and thereupon the aforesaid T. Johns, on the 14th day of October, in the sixteenth year of the reign of &c. before me the said justice on my view, according to the form of the statute aforesaid, is convicted, and for his offence aforesaid hath forfeited the sum of 10s. of lawful money of Great Britain, to the use of the poor of the said parish of L., in the said county of Glamorgan. In witness whereof I, the said justice, to this present record of conviction aforesaid have set my hand and seal, at L. aforesaid, in the county aforesaid, the day and year first above written.

R. R. (L. S.)

This conviction, says Mr. Paley (p. 31. App.), was removed by *certiorari*, and affirmed by rule of court. E. T. 17 Geo. 3. *

Conviction for suffering gaming in a public house, by 30 Geo. 2. c. 24. † *County of* } “ Be it remembered, that on this
(to wit.) } day of in the year of his
Majesty’s reign, W. B. is convicted before D. R., one of
his Majesty’s justices of the peace for the said county of
. [or, for the riding, or division of the said

* After this, it is not possible to concur in the common opinion, (see Pye’s Summary) that these early statutes of James are altogether obsolete; but it is not unreasonable to entertain considerable doubts whether such provisions of them, as have been particularly the subject of subsequent legislative provisions, which appear incompatible with those of such long anterior date, are not thereby superseded.

† By the 30 Geo. 2. c. 24. If any person licensed to sell any sorts of liquors, or who shall, sell or suffer the same to be sold, in his house, outhouse, ground, or apartment thereto belonging, shall knowingly suffer any gaming with cards, dice, draughts, shuffle-boards, mississippi, or billiard-tables, skittles, nine-pins, or with any other implement of gaming in his house, outhouse, ground, or apartment thereunto belonging, by any journeymen, labourers, servants, or apprentices, and shall be convicted thereof, on confession, or oath of one witness, before one justice, within six days after the offence committed; he shall forfeit for the first, 40s. and for every other offence, 10l. by distress by warrant of such justice; three fourths of which shall be to the churchwardens for the use of the poor, and one fourth to the informer.

§ 14.

And if any journeyman, labourer, apprentice, or servant, shall game

county of or, for the city, liberty, or town of
as the case shall be,] for and the said do ad-
 judge him, or her, to pay and forfeit for the same, the sum
 of

in any house, outhouse, ground, or apartment thereto belonging, wherein any liquors shall be sold, and complaint thereof shall be made on oath before one justice where the offence shall be committed, he shall issue his warrant to the constable, or other peace officer of the place wherein the offence is charged to have been committed, or where the offender shall reside, to apprehend and carry such offender before some justice acting for the county where the offence is committed, or the offender resides; and if the person apprehended be convicted by the oath of one witness, or on confession, he shall forfeit not exceeding 20s. nor less than 5s. as the justice shall think fit, every time he shall be convicted; one fourth to the informer, and the other three fourths to the overseers of the poor, for the use of the poor of the parish wherein the offence is committed; and if the party convicted shall not forthwith pay the sum so forfeited, such justice shall, by warrant, commit such offender to the house of correction, or some other prison of the county, to be kept to hard labour for not exceeding one month, or until he pay the money forfeited. § 10.

If *any person* convicted of *any* offences punishable by this act, shall think himself aggrieved by the judgment of the justice before whom he is convicted, such person may appeal to the next general or quarter-sessions; and the execution of the judgment shall be suspended, the person convicted entering into a recognizance at the time of conviction, with two sureties, in double the sum which he has been adjudged to forfeit, upon condition to prosecute such appeal with effect, and to be forthwith coming to abide the judgment and determination of the justices in sessions; which recognizance the justice before whom such conviction shall be, is to take, and the justices in sessions are finally to determine, the appeal, and to award such costs as to them shall appear just, to be paid by either party; and if, upon the hearing of the appeal, the judgment of the justice be affirmed, such appellant shall immediately pay the sum adjudged, with such costs as the justices in sessions shall award; or, in default of making such payments, shall suffer the pains and penalties by this act inflicted upon persons who neglect to pay the forfeitures. § 21.

The description of the offences, as well as the form of the conviction, are put with so much latitude, and in such general terms, by this statute, that grounds of appeal must be limited to a very narrow compass. Two things, however, are necessary to be observed, in order to bring the offence within the act: first, that the *game*

"Given under our hands and seals, the day and year aforesaid."

Conviction of
an alchouse-
keeper for
selling ale
without a
license, by
26 Geo. 2. 91.
extended by
36 Geo. 2. c. 113.

County of } O. O. is convicted, on his or her own
(to wit.) } confession [or on the oath of M. M.,]
of having sold ale, beer, or other liquors, in the parish of
. in this county, on the day of without
being licensed thereto according to law [or after being dis-
abled to sell, *as the case may be*]; * for which offence he the
said O. O. hath forfeited the sum of (to which part
of the form directed by the statute, it may be expedient to
add) besides the costs and expenses attending this convic-
tion, which costs and expenses I the said justice do hereby
ascertain and assess at the sum of † pursuant to the
statute in such case made and provided.—Given, &c.

should be one of those either *specifically* interdicted, or such as must be inferred to be comprised in the general words of prohibition, "any other *implement of gaming*;" secondly, that the persons supposed to have offended, must be within the description pointed out, "*journeymen, labourers,*" &c. On both these points some illustration may be collected from an anterior statute, *in pari materia*, 33 Hen. 8. c. 9.: The unlawful games there recognized *by name*, are, "*bowling, cointez, (quoiting,) cloyth, cayls, half-bowl, tennis, dicing, carding, and logating.*" The inferior persons which, it is presumed, were intended to be pointed out by the more general description in the statute of Geo. 2. which is under immediate review, are more distinctly particularized by the same statute of Hen. 8. and are "*artificers, handicraftsmen, husbandmen, apprentices, labourers, servants in husbandry, journeymen or servants of artificers, mariners, fishermen, watermen, or any serving men.*"

* By 4 Jac. 1. c. 4. "No person shall sell any beer or ale to any person, that then shall sell beer or ale, not having any license (other than for the use of his household,) upon pain to forfeit for every barrel 6s. 8d. and after that rate." § 1.

And by 35 Geo. 3. c. 113. "If any person shall sell ale or beer, or any other exciseable liquors, or shall permit any ale or beer, or any other exciseable liquors to be sold by retail in his house, outhouse, or yard, garden, orchard, or other place, without being duly licensed so to do, and shall hereof be duly convicted, such person shall, for every such offence, forfeit 20l.

† And also the costs and expenses attending the conviction, to be

CONVICTIONS—(*Auctioneers*).

County of } Information before two justices, set- Conviction of
 (to wit.) } ting forth that M. V., on, &c. at, &c. an auctioneer
 did, in the capacity of an auctioneer, put up to public sale goods to sale
 by auction,
 without having
 previously
 taken out a
 license.

levied as herein is directed ; and on and after a second conviction for the like offence, shall also be rendered incapable of being thereafter licensed. § 1.

And it shall be lawful for one justice, upon information or complaint, to summon the party accused, and also any witness or witnesses on either side. And it shall be lawful for the justice to proceed in a summary way, and, upon the oath of one witness, to convict the party accused, and proceed to levy the penalty by distress, &c. But if any person shall think himself aggrieved by the judgment of any justice, such person may appeal (and the justice shall make known to him, at the time of such Conviction, his right to appeal) to the next general quarter sessions, unless such sessions shall be holden within six days next after Conviction, and in such case, to the next subsequent sessions, and not afterwards, such person at the time of Conviction giving to such justice notice in writing of his intention to appeal, and also giving security, to the satisfaction of such justice, for the payment of the penalty, costs, and expenses, in case such judgment shall be confirmed, and also further entering into a recognizance at the time of such notice, with sufficient sureties conditioned to try the Appeal, and to abide the judgment, and pay such costs as shall be awarded by the sessions ; and the sessions shall thereupon proceed to hear and determine the matter, and their judgment thereon shall be final ; and in case such sessions shall adjudge such Appeal to be frivolous or vexatious, they may give to the party grieved reasonable costs, not exceeding 5*l*. § 12.

And any inhabitant of any parish, township, or place, shall be deemed a competent witness, notwithstanding his being an inhabitant. § 15.

And a person selling spirituous liquors, *not having a proper license from the justices*, may be convicted under the act, although he has a license from the commissioners of excise ; for the excise license only prevents the incurring of those particular penalties which are inflicted on persons selling spirits without an excise license, and does not exempt the party from any penalties to which he may be subject for not having a license from the justices. *R. v. Downs and another*, 3 T. R. 560.—and *R. v. Drake*, 3 Pract. Expos. 5.

But the above form of Conviction, which is directed by the statute itself, seems only to extend to the selling without a license from justices ; wherefore a different form of Conviction appears necessary for selling spirituous liquors without an excise license.

Evidence.

by way of auction, and did then and there vend and sell, by public sale by way of auction, divers goods and effects of the said M. V., without first taking out a license in the manner prescribed by the statute in that case made and provided; whereby, and by force of the said statute, the said M. V. hath for his said offence forfeited the sum of 50*l.* one moiety, &c. &c. (*Summons, Appearance, and plea of Not Guilty by the defendant.**) And thereupon, on the same day and year last aforesaid, at R. aforesaid, G. F., a credible witness, being sworn, &c. in the presence of the said M. V., does, upon his said oath, depose that, on the day of in the year he saw the said M. V. in the market-place in time of market, in the borough of R., in the county of Berks, mounted in a cart or rostrum, putting up goods to sale *by way of auction*; † and the said M. V. did then and there sell publicly several goods by way of auction and outcry, to the persons then and there assembled, he the said M. V. acting therein as an auctioneer; and that the said G. F. then and there bought of the said M. V., by way of auction at the sale, one lot of goods or wares of the said M. V., containing several articles, that is

* See *ante*, general form of Convictions.

† Of this conviction, it is observed by Mr. Paley, (p. 71), that the words of the act, 17 Geo. 3. c. 50. (which describes the offence, and which description has been adopted by the subsequent statutes on the same subject; the latter not altering the nature of the offence, but only enacting additional regulations, and increasing the amount of the duties) on which this is framed, make the offence to consist in “exercising the trade or occupation of an auctioneer, *at any sale*, by outcry, or *any other mode of sale* by auction, or *acting in such capacity*, without having first taken out a license;” and, therefore, that a single act of *so selling* is sufficient “to bring a person within the act.”

Which said license, within the bills of mortality, shall be granted by the commissioners of excise, or such person as they shall appoint; and elsewhere, by the collectors and supervisors, within their several collections and districts, under their hands and seals, upon payment of the said duties. 19 Geo. 3. c. 56. § 3.

And every person who shall take out such license, is to take out a fresh license, ten days before the expiration of twelve calendar months after taking out the first, before he do presume to sell by auction, and in the same manner renew every such license, from year to year. § 4.

to say, &c. for which the said G. F., being best or highest bidder, paid to the said M. V. one shilling and one penny. And the said M. V. does not produce any evidence to contradict the proof aforesaid. Wherefore it manifestly appears, &c. (*Conviction and forfeiture of 50*l.* mitigated to 5*l.* to be distributed as the law directs.*)

CONVICTIONS—(*Bread*).

Middlesex } Be it remembered, that on theday
(*to wit.*) } of in the year of the reign of our sovereign Lord George the of the united kingdom of Great Britain and Ireland, king defender of the faith, and in the year of our Lord W. S. of the parish of St. L. in the county of Middlesex, baker, is convicted before me, S. W. P. knight, one of his Majesty's justices of the peace for the said county of Middlesex, for that on theday of instant, at the parish of St. L. aforesaid, in the said county of Middlesex, there was found in the

Conviction of a baker having ingredients found in his bakehouse, other than allowed by the statutes.*

* Although numerous statutes have been passed of late years for the regulation of bakers, and to provide against the adulteration of flour and bread, some adapted to the metropolis and the bills of mortality only, and others to the kingdom in general, the 31st Geo. 2. c. 20, has been taken as the foundation and model for all of them, so far as respects the description of offences, for one of which the Conviction under review is provided.

The 21st section of that act provides, that the several sorts of bread which shall be made for sale, or sold, or exposed to or for sale, shall always be well made, and in their several and respective degrees, according to the goodness of the several sorts of meal or flour whereof the same ought to be made; and *no alum, or preparation or mixture in which alum shall be an ingredient, or any other ingredient or mixture whatsoever*, (except only the genuine meal or flour which ought to be put therein, and *common salt, pure water, eggs, milk, yeast, and barm*, or such leaven as shall be allowed) to be put therein.

The 29th section gives the power of searching houses, shops, mills, and other places for *bread and flour actually adulterated* with "*any mixtures or ingredients*" not the produce of the grain;

And section 30th describes the offence to which this conviction was applied in the terms following. "Every miller, mealman, baker, or seller of bread as aforesaid, in whose house, mill, shop, bakehouse, stall,

by way of auction, and did then and there vend
 public sale by way of auction, divers goods and
 said M. V., without first taking out a licence
 prescribed by the statute in that case made
 whereby, and by force of the said statute,
 hath for his said offence forfeited the
 &c. &c. (*Summons, Appearance, the defendant.**) And thereupon
 year last aforesaid, at R. aforesaid,
 ness, being sworn, &c. in the
 does, upon his said oath,
 in the year
 market-place in time of
 the county of Berks,
 up goods to sale by
 did then and there
 auction and out
 bled, he the
 and that the
 M. V., by
 wares of

Evidence.

• Sec.
 † C
 won
 wh
 s

... of the Royal Ex-
 ... and county last aforesaid, did

... pastry, warehouse, outhouse, or possession, any mixture
 ... shall be found, which shall be adjudged by any magistrate
 justice to have been lodged there *with an intent* to have adulterated
 the purity of the meal, flour, or bread, shall on conviction by confession,
 or oath of one witness before any such magistrate or justice, forfeit not
 exceeding 10*l.* nor less than 40*s.* unless the party charged with such
 offence, shall make it appear to the satisfaction of such magistrate or
 justice, that such mixture or ingredient was not brought or lodged where
 the same was seized, with design to have been put into any meal or
 flour, or to have adulterated the purity thereof; but that the same was
 there for some other lawful purpose. And it shall be lawful for such
 magistrate or justice, out of the forfeiture when recovered, to cause the
 offender's name, place of abode, and offence, to be published in some
 newspaper printed or published in or near the county, city, or place
 where such offence shall have been committed." § 30.

passing of a certain act of parliament, made and
 19th day of July, 1819, intituled, "An act
 amend an act made in the 55th year of the
 present Majesty, intituled, "An act to repeal
 force, relating to Bread to be sold in the City
 and liberties thereof, and within the weekly
 ten miles of the Royal Exchange, and
 ration of meal Flour and Bread, and
 of Bread within the same limits."
 of a subsequent act of parliament,
 9th day of December, 1819, en-
 titled the 24th day of June, 1820,
 year of his present Majesty,
 amend an act made in the
 present Majesty, intituled,
 force relating to Bread,
 and the liberties thereof,
 city, and ten miles of
 adulteration of meal
 and the weights of Bread
 , on the . . . day of January,
 . . . street, in the parish of . . .
 Middlesex aforesaid, unlawfully sell to one
 quarter of a peck loaf of Bread deficient . . .
 the weight, according to the weight the said loaf is
 directed to weigh by the statute in that case made and pro-
 vided, four ounces and an half of an ounce; one other
 quarter of a peck loaf of Bread, deficient in its due weight
 as aforesaid, four ounces and an half of an ounce; one other
 quarter of a peck loaf of Bread deficient in its weight as
 aforesaid, two ounces and an half of an ounce; and one
 other quarter of a peck loaf of Bread, deficient in its due
 weight as aforesaid, four ounces, making together fifteen
 ounces and an half of an ounce deficient in weight as afore-
 said. Information of the said Bread having been weighed
 by the said M. S. the seller thereof, at the time of such sale,
 in the presence of the said W. J. the purchaser thereof;
 and information of such deficiency in the weight of the said
 Bread having been duly laid. And information of the said

bakehouse of the said W. S. (he the said W. S. being a baker, and making Bread for sale within the weekly bills of mortality, to wit, in the said parish of St. L. in the county of Middlesex aforesaid) a certain quantity of potatoes prepared and mixed with water, which, after due examination of the said justice, have a djudged and do adjudge to have been deposited in the said bakehouse of him the said W. S. for the purpose of being used in adulterating the purity of meal flour and bread, contrary to the statutes in such case made and provided; and I the said justice do adjudge him the said W. S. to pay and forfeit for the same the sum of ten pounds, to go and be disposed of as the law directa. Given under my hand and seal at in the county of Middlesex, the day and year first above written.

Erroneous
conviction of
a seller of bread
for selling short
weight, under
stat. 59 Geo. 3.
c. 127.

Middlesex } Be it remembered, that on this day
(to wit.) } of January in the sixtieth year of the reign of
his present Majesty, at in the parish of in
the county of Middlesex, M. S. of B street in the parish
of in the county of Middlesex, seller of Bread, is
convicted before me A. B. esquire, one of his Majesty's
justices of the peace for the said county of Middlesex; for
that the said M. S. being a seller of Bread within the weekly
bills of mortality, and within ten miles of the Royal Ex-
change, to wit, in the parish and county last aforesaid, did

bolting-house, pastry, warehouse, outhouse, or possession, any mixture or ingredient *shall be found*, which shall be adjudged by any magistrate or justice to have been lodged there *with an intent* to have adulterated the purity of the meal, flour, or bread, shall on conviction by confession, or oath of one witness before any such magistrate or justice, forfeit not exceeding 10*l.* nor less than 40*s.* unless the party charged with such offence, shall make it appear to the satisfaction of such magistrate or justice, that such mixture or ingredient was not brought or lodged where the same was seized, with design to have been put into any meal or flour, or to have adulterated the purity thereof; but that the same was there for some other lawful purpose. And it shall be lawful for such magistrate or justice, out of the forfeiture when recovered, to cause the offender's name, place of abode, and offence, to be published in some newspaper printed or published in or near the county, city, or place where such offence shall have been committed." § 30.

after the passing of a certain act of parliament, made and passed on the 13th day of July, 1819, intituled, "An act to alter and amend an act made in the 55th year of the reign of his present Majesty, intituled, "An act to repeal the acts now in force, relating to Bread to be sold in the City of London, and the liberties thereof, and within the weekly bills of mortality, and ten miles of the Royal Exchange, and to prevent the adulteration of meal Flour and Bread, and to regulate the weights of Bread within the same limits." And also after the passing of a subsequent act of parliament, made and passed on the 30th day of December, 1819, intituled "An act to continue until the 24th day of June, 1820, an act passed in the 59th year of his present Majesty, intituled, "An act to alter and amend an act made in the 55th year of the reign of his present Majesty, intituled, "An act to repeal the acts now in force relating to Bread, to be sold in the city of London, and the liberties thereof, and within the weekly bills of mortality, and ten miles of the Royal Exchange, and to prevent the adulteration of meal Flour and Bread, and to regulate the weights of Bread within the same limits," to wit, on the . . . day of January, instant, in her shop in B . . . street, in the parish of . . . in the county of Middlesex aforesaid, unlawfully sell to one W. J. one quarter of a peck loaf of Bread deficient in its due weight, according to the weight the said loaf is directed to weigh by the statute in that case made and provided, four ounces and an half of an ounce; one other quarter of a peck loaf of Bread, deficient in its due weight as aforesaid, four ounces and an half of an ounce; one other quarter of a peck loaf of Bread deficient in its weight as aforesaid, two ounces and an half of an ounce; and one other quarter of a peck loaf of Bread, deficient in its due weight as aforesaid, four ounces, making together *fifteen ounces and an half of an ounce* deficient in weight as aforesaid. Information of the said Bread having been weighed by the said M. S. the seller thereof, at the time of such sale, in the presence of the said W. J. the purchaser thereof; and information of such deficiency in the weight of the said Bread having been duly laid. And information of the said

Bread having been produced and weighed within twenty-four hours after the baking thereof, in the presence of C. D. esquire, one of his Majesty's justices of the peace, usually acting in and for the district in which the said offence was committed, having been duly proved upon oath before me the said A. B. esquire, the said justice; and the said Bread not being such Bread as is usually made and sold *under the denomination of French or fancy Bread or Rolls*, contrary to the statutes in that case made and provided; and I the said last named justice having heard the evidence and maturely considered the same; do adjudge her the said M. S. to forfeit and pay for the same the sum of five shillings per ounce *for ten ounces, being part of the said fifteen ounces* and an half of an ounce deficiency in weight as aforesaid, amounting to the sum of two pounds ten shillings, to be applied as the act directs, together with five shillings for costs. And I do hereby *remit the penalty on the remainder** of the said deficiency in weight as aforesaid. Given under my hand and seal, &c.

* This conviction was appealed from to the Middlesex sessions of February, 1820, and not being supported by evidence, the merits were not discussed. Had it been otherwise, it was intended to have been resisted on the foundation of these words (*in Italicks*), rendering the whole judgment bad; for, as has been already observed, "a conviction must be good in all its parts, more especially in the adjudicating part, or will not be good at all; for, being an entire thing, it cannot be severed, and be good as to one part, and bad as to another," (Paley, 167). Now, the statute, on which this conviction is framed, says, "that persons committing the offences therein described," viz. selling loaves deficient in weight, "shall *for every such offence* forfeit and pay a sum not exceeding *ten shillings for every ounce* deficient in weight, and so *in proportion for any quantity less than an ounce*, as the justice shall think fit." No subsequent clause permitting in direct terms any *mitigation*, or *remission*, of penalties, is inserted in the statute; it was therefore intended to have been contended, that the convicting magistrate might indeed have reduced the penalty for the offence to any sum per ounce, (being less than ten shillings) and so in proportion for any quantities less than whole ounces; but that he has no authority to convict for *some* of the offences (*all* of them having been equally proved to have been committed) by levying on *any particular portion* of them five shillings, or any other specific sum, per ounce, and wholly *remitting* the penalty on the others.

CONVICTIONS—(Coaches).

Middlesex } Be it remembered, that on the twenty-sixth day of June, in the year of our Lord, 1818, at, &c. in the county of Middlesex, C. V. of, &c. aforesaid, labourer, came before W. M. S. esquire, one of his Majesty's justices of the peace for the said county, assigned to keep the peace of our Lord the king, in and for the said county, also to hear, &c. done and committed in the said county, and informed the said justice, that J. M. late of the parish of Fulham, in the county aforesaid, yeoman, on the fourteenth day of June, in the year aforesaid, at the parish aforesaid, in the county aforesaid, being *the driver and part owner of a certain coach with four wheels, and drawn by four horses, and then and there employed as a public stage coach for the purpose of conveying passengers for hire, to and from different places in Great Britain, to wit, from Windsor, in the county of Berks, to London, and from London to Windsor, aforesaid, did then and there, to wit, on the said fourteenth day of June, in the year aforesaid, at the parish aforesaid, in the county of Middlesex aforesaid, and he the said J. M. then and there being such driver and part owner of the said coach, and then and there driving the same in a certain public road, there called king-street, Hammer-smith, unlawfully carry, and allow to be carried, fourteen outside passengers, at one and the same time, by and on, and about the outside of the said coach, exclusive of him the said J. M. the driver and part owner of the said coach, there being no guard with the said coach, fourteen outside passengers, being two more outside passengers, than was specified or expressed in the licence, for using the said coach, to convey passengers for hire, as aforesaid, and by words painted on a conspicuous part thereon, none of the said fourteen outside passengers, being a child or children in the lap, or under seven years of age,* contrary to the statute, made*

Conviction of
a part owner
of a stage
coach, being
also the driver
on 50 Geo. 3,
for carrying
too many out-
side passengers.

* Such are the exceptions in the *enacting* section of this statute, viz. the 2d.—In the 7th section of the same statute, are the following provisions; viz. "Every person who shall be duly licensed to keep any such coach or other carriage above described, for the purpose aforesaid (*mail coaches always excepted*) shall cause to be painted within six months

CONVICTIONS—(COACHES).
remembered, that on the twenty-sixth conviction of the year of our Lord 1818, at a particular time, one of his Majesty's Justices of the peace, assigned to keep the peace of our Lord county, in and for the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors done and committed in the said county, and informed the said justice, that D. A. late of the parish of Fulham, in the county aforesaid, yeoman, on the twenty-first day of June, in the year aforesaid, about the hour of seven in the afternoon,* on the said last mentioned day, at the parish aforesaid, in the county aforesaid, being the driver of a certain coach with four wheels, and drawn by four horses, and then and there employed as a public stage coach, for the purpose of conveying passengers for hire, to and from different places in Great Britain, to wit, from Brentford, in the county aforesaid, to London, and from London to Brent-

and the charge contained in the said information, he was not guilty of the said offence, but the proved, upon the oath of J. H. esquire, and witnesses in that behalf, it manifestly appeared to the last mentioned justice, that he the said offence charged upon him in the said before considered and adjudged by me justice, that he the said J. M. by convict him of the offence declare and adjudge that he the of forty pounds of lawful distributed, &c. according

745

on the first day of Conviction of the driver of a stage coach, for carrying too many outside passengers, according to 50 Geo. 3 c. 48, and that on two different journeys in one and the same day.

Lord, 1818, at

J. V. labourer, came before

one of his Majesty's Justices of the peace,

County, assigned to keep the peace of our Lord

ing, in and for the said county, and also to hear and

determine divers felonies, trespasses, and other misdemeanors done and committed in the said county, and informed the said justice, that D. A. late of the parish of Fulham, in the county aforesaid, yeoman, on the twenty-first day of June, in the year aforesaid, about the hour of seven in the afternoon,* on the said last mentioned day, at the parish aforesaid, in the county aforesaid, being the driver of a certain coach with four wheels, and drawn by four horses, and then and there employed as a public stage coach, for the purpose of conveying passengers for hire, to and from different places in Great Britain, to wit, from Brentford, in the county aforesaid, to London, and from London to Brent-

* The hour not necessary to be inserted, if only one offence in the day charged, but the distinct offences within one day being charged in this conviction, it became necessary to state the hours, in order to shew that they were distinct acts. This conviction was appealed against, on the facts only, but confirmed on hearing.

ford aforesaid, did then and there, to wit, on the said twenty-first day of June, in the year aforesaid, about the said hour of seven in the afternoon of the said last mentioned day, at the parish of Fulham aforesaid, in the county aforesaid, he the said D. A. then and there being such driver of the said coach, and then and there driving the same in a certain public road, there called king-street, Hammersmith, unlawfully carry, and allow to be carried, fourteen outside passengers, at one and the same time, by and on, and about the outside of the said coach, exclusive of the said D. A. the coachman, there being no guard with the said coach, fourteen outside passengers, *being two more outside passengers than specified or expressed in the license for using the said coach, to convey passengers for hire as aforesaid, and by words painted on a conspicuous part of the said coach, none of the said fourteen outside passengers being a child or children in the lap, or under seven years of age, contrary to the statute made in the reign of King George the Third, intituled, "An act to repeal three acts, made in the twenty-eighth, thirtieth, and forty-sixth year of his present Majesty, for limiting the number of persons to be carried on the outside of stage coaches or other carriages, and to enact other regulations for carrying the objects of the said act into effect,"* which hath imposed a forfeiture of the sum of twenty pounds for the said offence, that is to say, the sum of ten pounds for each outside passenger, beyond the number by the said statute allowed. Whereupon the said D. A. after being duly summoned to answer the said charge, did not appear before the said M. S. or before me, R. R. esquire, one other of his Majesty's justices of the peace, for the said county assigned to keep the peace of our said Lord the King, in and for the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors done and committed in the said county, or before any other of his Majesty's justices of the peace for the said county, on the twenty-third day of July, in the year aforesaid, at, &c. aforesaid, in the county aforesaid, as required, and pursuant to the said summons, to answer the said charge, but the same being now fully proved before me the said R. R.

the last mentioned justice, upon the oath of J. H. esquire, H. C. and W. W. three credible witnesses in that behalf, it manifestly appears to me the said last mentioned justice, that the said D. A. is guilty of the offence charged upon him in the said information; it is therefore considered and adjudged by me the said last mentioned justice, that he the said D. A. be convicted, and I do hereby convict him of the offence aforesaid, and I do hereby declare and adjudge that he the said D. A. hath forfeited the sum of twenty pounds, of lawful money, &c. for the offence aforesaid, to be distributed, &c. according to the forms of the statutes.

Given, &c.

Middlesex } Be it remembered, that on the thirteenth Erroneous
 (to wit.) } day of July, in the year of our Lord, 1818, at conviction of
 &c. in the county of Middlesex, T. M. of the said parish a coach driver,
 of, &c. in the said county, yeoman, came before me, R. no costs being
 B. esquire, one of his Majesty's justices of the peace, for given as pre-
 the said county, &c. &c. and informed me that T. D. late scribed by the
 of the parish of Tottenham, in the said county of M. being statute.
 the proprietor of a certain public and stage coach, &c. did
 on the sixth day of the said month of July, in the said year
 1818, drive at the said parish of Tottenham, in the said
 county, a certain public stage coach, with four wheels,
 drawn with four horses, for conveying passengers for hire,
 to and from different places in Great Britain, to wit, to
 and from London to Southgate, in the said county of
 Middlesex, and at the said parish of Tottenham, and in the
 said county of Middlesex, on the said sixth day of July, when
 he did so drive the said public stage coach, did unlawfully
 carry thereon more than twelve outside passengers, exclusive
 of the said T. D. driving the same, none of them being a child
 or children in the lap, or under seven years of age, to wit,
 thirteen outside passengers, grown persons, exclusive of the
 said T. D. Whereupon the said T. D. after being duly
 summoned to answer the said charge, appeared before me
 the said R. B. on the 18th day of July, 1818, at, &c. in
 the said county of Middlesex, and having heard the charge
 contained in the said information, declared that he was not

guilty of the said offence; but the same being fully proved upon the oaths of D. E. of the said parish of Tottenham, in the said county of Middlesex, cordwainer, and T. N. of the same place, labourer, credible witnesses; it manifestly appears to me the said justice, that the said T. D. is guilty of the offence charged upon him in the said information. It is therefore considered and adjudged by me the said justice, that he the said T. D. be convicted, and I do hereby convict him of the offence aforesaid; and I do hereby declare and adjudge that he the said T. D. hath forfeited the sum of ten pounds, of lawful money of Great Britain, for the offence aforesaid, to be distributed as the law directs according to the form of the statute in that case made and provided. Given under my hand and seal, the 18th day of July, 1818.*

* Several objections were taken to the conclusion of this conviction; first, as to the insufficiency of the distribution of the penalty, by not inserting any words descriptive of the particular road on which the offence was committed, or indicative of the trustees of such road; secondly, as to the want of some adjudication of costs, on which latter point it was concluded the statute was peremptory. The last mentioned of these objections was considered decisive, and the conviction was quashed.—The words of the act, so far as they relate to these questions, are,

“ In all cases where any penalties and forfeitures incurred for any offence committed against this act, shall and may be recoverable before one or more justices of the peace, or before any other magistrate above mentioned, every such justice or other magistrate is hereby required to administer an oath, and upon proof of any such offence, *shall give judgment for the forfeiture or penalty incurred, and for the reasonable costs and charges of the prosecution*; and if the same shall not be paid, shall commit the person so convicted to the common gaol or house of correction for the said county, &c. for not exceeding three months nor less than one month, at the discretion of the said justice or other magistrate above mentioned, unless such person shall enter into such recognizance with such surety before such justice or justices, or other magistrate as herein-before mentioned. § 16.

If any such justice or other magistrate before whom any person shall have been convicted for any offence against this act, shall see cause to mitigate such penalty, he may do so to any sum not exceeding one moiety of the penalty incurred, *over and above all reasonable costs and charges incurred in the prosecution*, and one half either of the whole or of the moiety of such penalty, *with the said costs and charges*, shall be

Middlesex } *Be it remembered*, that on the second day of Erroneous conviction of a coach owner for similar penalties, the driver not being known.
 (to wit.) } April, in the year of our Lord, 1819, at, &c.
 in the county of Middlesex, B. H. of Bond-street, Turnham Green, in the parish of Chiswick, in the said county, labourer, came before me, W. A. W. esquire, one of his Majesty's justices assigned to keep the peace of our sovereign Lord the King, in and for the said county, and also to hear, &c. done and committed in the said county, and informed me the said justice, that *a certain man who WAS (and STILL IS*) unknown to him the said B. H.* on the twenty-second day of March, in the year aforesaid, at the parish of St. Margaret, Westminster, in the county aforesaid, being the driver of a certain coach with four wheels, the same not being a mail coach, and *drawn by three horses* and then and there employed as a public stage coach, for the purpose of conveying passengers for hire to and from different places in Great Britain, to wit, from Twickenham, in the said county of Middlesex, to London, and from London to Twickenham, aforesaid, did then and there, to wit, on the twenty-second day of March, in the year aforesaid, at the parish of St. Margaret, Westminster, in the county of Middlesex,

paid to the informer for his own behoof, or be at his disposal for public purposes (*except in the special cases above provided for*) and the other half shall be paid to the trustees of the roads where such offence is committed, who are hereby required in consideration thereof to direct their surveyors to watch over the due execution of this act, in the several roads to the superintendence of which they are respectively appointed. § 17.

* There was an appeal to this conviction on several grounds, the first of which was on account of the omission of these words "and still is" unknown.

The 4th section of the statute (50 Geo. 3. c. 48.) provides, that the driver of the coach committing any of the specified offences, shall be liable to the penalties imposed by it in the first instance; and section 8, that in case *the driver shall not be known, or cannot be found*, the owners, or any of them, are in that case to be liable to the penalties. The conditions on which the informant can come upon the proprietors, then, by these words, are two; first, that such driver *is* unknown to him; secondly, that he *continues so*, or in the synonymous words of the statute, that "*he cannot be found*," for the purpose of levying the penalty upon him, in preference to the (perhaps unconscious and innocent) proprietor.

aforesaid, *the said man being then and there such driver of the said coach, and then and there driving the same in a certain public road near the one mile stone, between London and Kensington, unlawfully carry, and allow to be carried eleven outside passengers at one and the same time, by and on, and about, the outside of the said coach, exclusive of the said man the coachman, (there being no guard with the said coach) being four more outside passengers than is allowed by a certain act of parliament, made in the 50th year of the reign of King George the Third, notwithstanding there being written on a conspicuous part of the said coach, "licensed to carry twelve outside passengers," none of the eleven outside passengers being a child or children in the lap or under seven years of age, contrary to the said statute, made and provided in the 50th year of the reign of King George the Third, intituled, "An act to repeal three acts made in the 28th, 30th, and 46th years of his present Majesty, for limiting the number of persons to be carried on the outside of stage coaches or other carriages, and to enact other regulations for carrying the objects of the said acts into effect," which hath imposed a forfeiture of the sum of forty pounds for the said offence, and the said B. H. further informed me the said justice, that one J. T. late of Twickenham, in the county of Middlesex, aforesaid, coach master, then and there, to wit, on the twenty-second day of March, in the year aforesaid, in the parish of St. Margaret, Westminster, in the county of Middlesex, aforesaid, was the owner of the said coach at the time the said offence was then and there committed by the said man who was then and there such driver as aforesaid, and that the said J. T. being such owner of the said coach had by reason of the said statute, (the said man the driver not being known as aforesaid) became liable to the said fine and penalty, which hath imposed a forfeiture of the sum of forty pounds for the said offence. Whereupon the said J. T. after being duly summoned to answer the said charge, did appear before me for that purpose, on the thirteenth day of April, in the year aforesaid, at, &c. aforesaid, in the county of Middlesex, aforesaid, and the said J. T. having heard the charge con-*

tained in the said information, declared that he was *not guilty of the said offence*, but the same being fully proved on the oath of J. H. a credible witness in that behalf, it manifestly appears to me the said justice, that he the said J. T. is *guilty of the offence* charged upon him in the said information.* It is therefore considered and adjudged by me the said justice, that he the said J. T. be convicted, and I do hereby convict him of the offence aforesaid, and I do hereby declare and adjudge that the said J. T. hath forfeited the sum of forty pounds, of lawful money of Great Britain, for the offence aforesaid, which I hereby mitigate to the sum of thirty pounds, together with the sum of ten shillings, for the reasonable costs and charges expended or incurred in this prosecution, to be distributed as the law directs, according to the form of the statute in that case made and provided. Given, &c.

CONVICTIONS—(Fish).

County of Southampton } Be it remembered, that on the
(to wit.) } 31st January, A. D. 1818, at Sopley, in the county of Southampton, Sir Henry Fane, of Avon, in the said county of S., K.C.B., at the instance and

Erroneous conviction on 5 Geo. 3. c. 14, for taking fish in a private fishery on inclosed ground, but not being a park, paddock, garden, orchard or yard. †

* It is true such are the general words of the summary form prescribed by the statute; but, as has been previously observed, on the authority of a case determined, 6 T. R. 538, as well as from the common sense of the thing, the legislature "does not always intend that there must be a literal adherence to the form prescribed." In *this conviction* there is no charge of *guilt* against the owner, therefore "not guilty" cannot be the defendant's plea, nor could the judgment be that he was *guilty* generally. His defence probably would be, that the driver committed the offence without his knowledge, and if he succeeded in shewing that to be true, he would himself by the terms of the statute, be discharged, and the driver would continue liable whenever found. If he did *not* succeed, but were to be convicted, it would not be of the offence here charged, but of connivance, given to some degree, and in some qualified manner, in which case the adjudication must be a *specific*, not a *general* one. The Conviction was quashed.

† This Conviction, with many of the notes annexed, is taken from 1 Chit. R. 158, and is a most important precedent, inasmuch as it not only shews a long succession of precedents on the subject to have been erroneous, but how they ought to be drawn.

on the behalf of the Honourable Anne Fane, widow, Lady of the Manor of Avon Tyrrel, in the said county, came in his proper person before me James Jopp, Esq. one of the justices of our Lord the King assigned to keep the peace of our said Lord the King in and for the said county, also to hear and determine divers felonies, trespasses, and other misdemeanors committed within the same, and one of the three justices whose hands and seals are hereunto subscribed and set, and upon oath to him by me, then and there administered upon the Holy Gospels of God, gave me the said justice to understand, and be informed, that, on Thursday, the 22d January, A. D. 1818, aforesaid, at S. aforesaid, in the county aforesaid, F. D., of Ringwood, in the county aforesaid, gentleman, did take, kill, and destroy, with a net, several fish,* in a certain part of the river Avon, which ran in certain inclosed grounds; within the said manor, being private property; † and did land his said net, with the said fish therein, upon a certain copyhold garden, in the occupation of one William Tuck, within the said manor, at S. aforesaid, in the county aforesaid; the said F. D. having so acted as aforesaid without the authority of the said A. F., and without and against her consent, contrary to the form of the statute in that case made and provided; the said A. F. being then and there owner of the said part of the said river, and of the fishery of the same; and the said F. D. not then and there having any just right or claim to take, § kill, carry away, or destroy

* The number and description of the fish ought to be set out, as "divers, to wit, ten perch, ten carp," &c. *R. v. Marshall*, 2 Kcb. 594.—*Paley*, 82.—*R. v. Burnaby*, 2 Ld. Raym. 900.

† If the fishery were *not* in inclosed grounds, then the proceeding should be on 22 Car. 2. c. 25. § 7.

‡ And on these words of the statute, "in any inclosed grounds, being private property," it has been decided, that a stream of water running *by the side of* a piece of inclosed ground, which is inclosed on every side except that on which it is bounded by the water, is not a stream in inclosed ground within the meaning of this statute. *Lisle v. Brown*, 1 Marsh. R. 127.

§ This negative allegation being introduced by a separate proviso (§ 5.), it is necessary to be introduced. *Paley*, 39.

any fish in that part of the said river, and the said part of the said river wherein the said fish were so taken, killed, and destroyed by the said F. D. as aforesaid, not then being in any park or paddock, or in any garden, orchard, or yard adjoining or belonging to any dwelling-house; but then being in other inclosed grounds then being private property at S. aforesaid, in the county aforesaid; whereby and by force of the statute in that case made and provided, the said F. D. hath forfeited for his said offence the sum of 5*l.* to the said A. F., the owner of the fishery aforesaid.* Whereupon the said Sir H. F., on behalf† of the said A. F., lady of the said manor, and owner of the fishery aforesaid, prayed the judgment of me the said J. J., so being such justice as aforesaid, in the premises, and that the said F. D. might be forthwith apprehended and brought before me, to answer the said complaint: whereupon afterwards, to wit, on the 2d day of February instant, being by virtue of a certain warrant for that purpose, issued by me the said J. J., being such justice as aforesaid, brought before us J. J., B. B., and S. C., whose hands and seals are hereunto subscribed and set, being respectively justices of our said Lord the King, assigned to keep the peace of our said

* In giving the judgment of the court on this conviction, Bailey, J., aid, "The penalty is either to be recovered by conviction at law, or by information before a magistrate, and the forfeiture is given to the owner, and to him only. If it be by action, that action must be brought in the name of the owner, to whom the penalty is given; in the case of information, by necessary intendment, it must be in the name of the owner of the fishery, or it must appear on the face of it to be by a third person, at the instance of such owner."

† This mere statement by the justice that the proceedings were on behalf of the owner, &c. is not sufficient. It should have been, at least, stated, that the *informer* swore before the magistrate that he was authorized to prosecute by the owner, as thus: "And the said Sir H. F. upon his oath aforesaid, further giveth me the said justice to understand and be informed, that he the said Sir H. F. hath been and is duly authorized by the said A. F., the said owner of this fishery, and at her instance and on her behalf, to inform me the said, &c. concerning the said offence, and to prosecute the said F. D. for the same, with the intent to recover the sum of 5*l.* pursuant to the statute, &c. for and on behalf of the said A. F. And thereupon, &c. &c."

Lord the King in and for the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the same county done and committed, at Christchurch, in the said county, to answer the said complaint contained in the said information; and having heard the same read, and the said Sir H. F. being also present before us, and complaining before us against the said F. D. aforesaid, for the offence aforesaid, and praying that the said F. D. may be convicted thereof, the said F. D. is asked by us the said justices, if he can say any thing for himself why the said F. D. should not be convicted of the premises above charged upon him, in form aforesaid, to which the said F. D. saith, that he is not guilty thereof. Nevertheless, on the said 2d day of February instant, at Christchurch aforesaid, in the county aforesaid, J. H., of the parish of Sopley, in the said county, servant to the said Sir H. F., a credible witness, in this behalf cometh before us the said justices, in his proper person, and before us the said justices, to wit, on the said 2d day of February instant, at Christchurch aforesaid, in the county aforesaid, being duly sworn touching the premises upon the Holy Gospels of God upon his corporal oath, to him the said J. H. then and there administered by us the said justices, we the said justices having then and there full power and authority to administer the said oath to the said J. H., depose, sweareth, and upon his oath aforesaid affirmeth and saith, in the presence * of the said F. D., that the said F. D. at Sopley aforesaid, in the county aforesaid, by means of a certain instrument called a net, did take, kill, and destroy the fish † in a certain part of the said river Avon, at Sopley aforesaid, in the county aforesaid, running by and adjoining ground in the occupation of the said William Tuck, being inclosed ground within the said manor; which said part of the said river was not then nor is in any park or paddock, or in any garden, orchard, or yard adjoining or belonging to any dwelling-house, but then was and is in other inclosed grounds, then and there being private property at Sopley

* "And hearing," should have been added.

† Number and kind, as before.

aforesaid, in the county aforesaid; and that the said Anne Fane then and there was, and still is, the true and lawful owner of the said manor, and of the fishery of the said part of the said river: * and thereupon the said F. D., having heard the said evidence so given against him as aforesaid, is asked by us the said justices, if he can say or prove any thing in answer to such evidence, or show why he should not be convicted of the offence charged upon him in the form aforesaid; and because the said F. D. doth not, nor can, say any thing in his own defence touching or concerning the offence so charged upon him as aforesaid, or show why he should not be convicted of the same offence, although he the said F. D. hath called before us one witness, that is to say, Stephen Pardy, who, after having been duly sworn, can say nothing touching the matter in question for, and on the behalf of, the said F. D., † and insomuch as the said F. D. has not proved or alledged that he had the authority or consent of the said A. F., being such lady of the manor and owner of the fishery aforesaid, nor shown that he had or hath any just right or claim whatever so to do: therefore it is, on the said 2d day of February instant,

* To which should have been added, "And the said Sir H. F., a credible witness in this behalf, on the said second day of February instant, at, &c. aforesaid, also cometh before us the said justices in his proper person, and before us the said justices, being then and there duly sworn touching the premises, upon the Holy Gospels of God, upon his corporal oath, to him the said Sir H. F. then and there administered by us the said justices, we the said justices having then and there full power and authority to administer the said oath to the said Sir H. F., depose, swear, and upon his oath aforesaid affirmeth and saith, in the presence and hearing of the said F. D., that the said fishing and offence were done and committed without the consent of the said A. F., contrary to the statute in that case made, &c.; and that he the said Sir H. F. hath been, and still is, duly authorized by the said A. F., the said owner of the said fishery, and at her instance, and on her behalf, to inform us the said justices of and touching and concerning the said offence, and to prosecute the said F. D. for the same, with the intent to recover the sum of 5*l.* pursuant, &c. for the use, &c. of the said A. F."

† It should either be stated more explicitly, that he *said nothing* relating to the charge; or the particular evidence given by him should be set forth.

at, &c. aforesaid, by us the said justices adjudged, upon the evidence of the said J. H., a credible witness as aforesaid, according to the form of the statute in such case made and provided, that the said F. D. is guilty of the offence so charged upon him as aforesaid, and that he the said F. D. be, and he is hereby, convicted by us the said justices, of the said offence, according to the statute in such case made and provided: and we the said justices, do award and adjudge that for the offence aforesaid, he the said F. D. * hath forfeited the sum of *5l.* of lawful money of Great-Britain, to be paid as the statute doth direct, to us the said justices, for the use of the said A. F., so being owner of such fishery as aforesaid.—Given under our hands and seals, at, &c. aforesaid, this 2d day of February, in the year of our Lord 1818 aforesaid.

CONVICTIONS—(Game).

This title, presenting one of the subjects which are of most frequent occurrence in country practice, at the hazard of being accused of tautology, the Compiler has thought it right to be somewhat more than ordinarily diffuse, as well in precedents, as in observations on them. The first precedent is after a most comprehensive form, recommended by the earlier books of practice; for comments on which, however, see notes to the subsequent precedents on the subject.

Conviction on
5 Anne, c. 14.

County of } Be it remembered, that on the . . .
(*to wit.*) } day of in the year of the
reign of his present Majesty George the . . . by the grace
of God of Great Britain, France, and Ireland, King, De-
fender of the Faith, &c. at in the county of
A. B., of in the said county of yeoman, in his
proper person came before me P. Q., Esq. one of the
justices of our said Lord the King, assigned to keep the
peace of our said Lord the King in and for the said county,
and also to hear and determine divers felonies, trespasses,

* If several defendants are convicted of one joint offence, here say,
“they the said A. B., C. D., and E. F., have each of them forfeited for
their said offence, the sum of *5l.*”

and other misdemeanors done and committed in the said county, and then and there gave me the said justice to understand and be informed, that one C.^d., of the parish of in the said county of Husbandman, within three months now last past,* to wit, on the day of in the said year of the reign of our said Sovereign Lord the King, that now is (the said C. D. not having then lands or tenements, or some other estate of inheritance in his own or his wife's right, of the clear yearly value of 100*l*. nor for term of life, nor any lease or leases for ninety-nine years or any longer term, of the clear yearly value of 150*l*. nor then being the son and heir apparent of an esquire or other person of higher degree,† nor then being the lord of any manor or royalty, nor then being the owner or keeper of any forest, park, chase, or warren; nor then being gamekeeper of any lord or lady of a manor, and qualified by the laws of this realm to kill game; nor then being a gamekeeper of any such lord or lady, and truly and properly a servant to such lord or lady, or immediately employed and appointed to take and kill the game for the sole use and immediate benefit of such lord or lady,‡ nor then being in any other manner qualified, empowered, or licensed, § by the laws of

A conviction on this statute of Anne is directed to be within three months, and therefore if the hearing of the matter be adjourned over that time, although with the consent of the defendant, a conviction afterwards will not be good. *R. v. Tolléy*, 3 E. R. 467.

† A number of exceptions from the prohibitions against killing game having been inserted in the statute of Car. 2. commonly called "the Qualification Act," and the statute of Anne having inflicted a penalty (on persons *not so qualified*) for keeping, or using, the instruments necessary for that purpose, it has been long decided, that in a conviction under this latter statute, all the qualifications mentioned in the former one must be particularly set forth in the information, and *expressly negatived*.

‡ In almost all the precedents of convictions, it has been usual to negative the pretensions to kill game, which are comprehended by the words distinguished by *Italics*, but it is observed by many authorities, that, containing only *constructive* qualifications, and not in the act of Car. 2., the negating them is unnecessary. *Boscaw. 157.—Paley, 93. Nares, 58.*

§ The word "*qualified*" needs no further illustration. *Empowered*,

Summons.

this realm, either to take, kill, or destroy any sort of game whatsoever, or to keep or to use any greyhounds for that purpose,) did, at the parish of in the county of aforesaid, keep and use three dogs called greyhounds, to kill and destroy the game, against the form of the statute in such case made and provided; whereupon the said C. D. afterwards, to wit, on the day of in the year aforesaid, at aforesaid, in the county aforesaid, had notice of the said information, and of the offence therein charged upon him as aforesaid, and was then and there by me the said justice, in due manner, summoned to appear before me the said justice, at aforesaid, in the county aforesaid, to make his defence against the said charge, contained in the information aforesaid; and thereupon afterwards, that is to say, on the day of in the year of the reign of our said Sovereign Lord the now King, at aforesaid, in the county of aforesaid, he the said C. D. being duly summoned as aforesaid in this behalf, before me the said justice appeareth,* and is present in order to make his defence against the said charge, contained in the said information; and having heard the same, he the said C. D. is asked by me the said justice, if he can say any thing for himself why he the said C. D. should not be convicted of the premises above charged upon him, in form aforesaid.

Appearance.

refers to persons authorized by *deputation*. *Licensed*, (it should appear, from a marginal note, *post*, p. 760) relates to the statute 25 Geo. 3. (and subsequent ones on the same subject, for regulating the duties) by which the additional *license* to kill game, viz. of a certificate, is made requisite, independently of, and in addition to, the other privileges arising out of property, or rank. This specific offence, of killing game without having obtained a certificate, however, is a perfectly distinct offence, and subject to a very different penalty, and may be omitted in a conviction for killing game without having the other qualifications, as it may also be the subject of a separate conviction where the other qualifications are possessed by the offender. See 48 Geo. 3. c. 55.—52 Geo. 3. c. 93.—54 Geo. 3. c. 141.—and 2 Pract. Expos. 595.

* If the defendant do not appear, or if he confess the charge, this precedent must be varied according to the fact.

And thereupon he says, that he is not guilty of the offence Plea or defence.
 [or pleadeth and saith that, *as the defence may be*] whereupon
 I the said justice, at the same time and place, that is to say,
 on the day of in the year aforesaid, at
 aforesaid, within the said county of do proceed to
 examine into the truth of the said complaint contained in the Hearing.
 said information, in the presence and hearing as well of the
 said A. B. as of the said C. D., and thereupon on the same
 day and year last mentioned, at aforesaid, in the
 county aforesaid, M. N., of a credible witness in Evidence.
 this behalf, comes in his proper person before me the said
 justice, to prove the said charge, contained in the said in-
 formation, against the said C. D., and is now here by me the
 said justice sworn, and does before me the said justice, take
 his corporal oath upon the Holy Gospel of God to speak
 the truth, the whole truth, and nothing but the truth, of
 and concerning the matters contained in the said informa-
 tion (I the said justice having administered, and having
 sufficient power and competent authority to administer such
 oath to him in that behalf); * and the said M. N. being
 so sworn, doth on his said oath depose and say, in the pre-
 sence and hearing of the said C. D., that he the said C. D.,
 on the day of aforesaid, in the year aforesaid,
 at the parish of aforesaid, in the county aforesaid,
 not being then in any manner *qualified, empowered, li-
 censed, or authorized*, by or according to the laws of this

* Objection has been taken, in more than one instance, where this statement of the authority to administer the oath had been omitted; but in one case (*R. v. Picton*, 2 E. R. 195.) it was decidedly laid down by the court, that it is sufficient that the statute, giving the authority to the magistrate to proceed, takes notice of his having such a power. The 15 Geo. 3. c. 39. indeed recognizes some doubt on this subject, and expressly gives the authority to justices to administer oaths in all cases over which they have jurisdiction given them *to levy penalties, or to make distresses*. It leaves other cases, therefore, in which corporal punishment is only to be inflicted, to the general interpretation of the law; which is, however, favourable to the authority of justices to administer oaths, in all cases, wherein the statutes giving them power to hear and determine, recognize evidence on oath as the medium through which they are to come to a conclusion.

Defendant
neglects to
show his
certificate.

realm, to keep or* use any greyhounds to kill and destroy the game, did keep and use three greyhounds to kill and destroy the game; and that he then and there saw the said C. D. walking across a certain piece of down, commonly called the same being a place where hares usually lie, with three greyhound dogs, and one spaniel dog, beating the bushes with a pole or stick which he held in his hand † (or as the evidence is). And thereupon the said C. D. is now, by me the said justice, asked what he hath to say why he should not be convicted by me the said justice of and for the said offence; but the said C. D. doth not produce to or before me any evidence on his behalf to show and prove that he is not guilty of the offence aforesaid, nor doth he show or prove that he the said C. D. then, to wit, on the said day of in the year sforesaid, had obtained any certificate or license to take and kill game; ‡ or that he had lands or tenements, or some other estate of inheritance in his own or his wife's right, of the clear yearly value of 100*l.* or for term of life, or lease or leases for ninety-nine years, or some longer term, of the clear yearly value of 150*l.*; or that he then was the son and heir apparent of an esquire, or other person of higher degree, or the lord of some manor or royalty, or the owner or keeper of some forest, park, chase, or warren, or that he then was a gamekeeper of a lord or lady of a manor, and qualified by the laws of this realm to kill game; or a gamekeeper of such lord or lady, and truly

* The words of the statute 5 Anne, c. 14. are in the disjunctive, viz. *keep or use any greyhounds, setting-dogs, hays, lurchers, tunnels, or any other engines, to kill and destroy the game*; the offences are therefore distinct and several; and a conviction either for the *keeping*, or for the *using*, of any things of the kinds enumerated, will be good. This is settled by several determinations: *Rex v. Filer*, Str. 496.—*R. v. Hartley*, Cald. Ca. 175.

† These words, introduced in *Italics*, are for the purpose of showing, from the actual purpose to which they were applied, that the subjects of the information were kept for the purposes prohibited by the statute, and not for other purposes which might be innocent, and which it was not the object of the statute to prohibit.—*R. v. Dair*, 6 T. R. 177.—*R. v. Clarke*, 8 T. R. 222.

‡ See *ante*, p. 758, note.

and properly a servant to such lord or lady, or immediately employed and appointed to take and kill the game for the sole use and immediate benefit of such lord or lady, or that he was in any other manner qualified, empowered, licensed, or authorized by the laws of this realm to take, kill, or destroy any sort of game, or to keep or use any greyhounds for that purpose. Whereupon, and upon hearing and duly *Adjudication.* examining the whole matter aforesaid, it manifestly appears to me the said justice, that the said C. D. was not, on the said day of aforesaid, in any manner qualified, empowered, licensed, or authorized, by or according to the laws of this realm, to keep or use any greyhounds to kill and destroy the game, and that the said C. D. is guilty of the premises above charged upon him, in and by the information aforesaid. It is therefore considered and adjudged by me the said justice, that the said C. D. be convicted, and he is accordingly, on the said day of in the year aforesaid, at aforesaid, in the county aforesaid, before me the justice aforesaid, by the testimony of the said M. N., a credible witness as aforesaid, according to the form of the statute aforesaid, convicted of the offence charged upon him in and by the said information. And I do hereby adjudge that the said C. D., for the said offence, hath forfeited the sum of 5*l.* of lawful money of Great Britain, to be distributed as the statute in that case made and provided doth direct. *In witness whereof I the said justice to this present record of conviction have set my hand and seal, at aforesaid, in the county aforesaid, the said day of in the year of the reign of our Sovereign Lord the King that now is.*

Bedfordshire } Be it remembered, that on the sixth of For keeping
(to wit.) } January, in the 41st Geo. III. at, &c. T. and using an
French, of &c. cometh before me, J. Webster, clerk, one engine to de-
of the justices, &c. and then and there giveth me the said stroy the
game.*

* The foregoing precedent of a conviction on the statute of Anne has been stigmatized by a recent writer, (see Christian on the Game Laws, p. 201.) as clumsy and containing superfluous matter. He recommends

justice to understand and be informed, that T. Stone, of A. in the county of B. gentleman, within three months then last past, that is, on Saturday the third of January, in the 41st year, &c. at M. &c. he the said T. S., being a person not then having lands or tenements, or any other estate of inheritance, in his own right or his wife's right, of the clear yearly value of 100*l.* per annum, &c. (and so negating all the other qualifications of the stat. 22 & 23 Car. 2.) not then being in any other manner qualified or entitled in his own right to keep or use any engine to kill and destroy the game of this kingdom, did keep and use a certain engine to kill and destroy game, called a gun, against the form of the statute, &c.; of which said information and of the offence therein charged upon him as aforesaid, he the said T. S. on the said sixth of January, &c. at M. &c. had notice; whereupon the said T. S. appeareth, and is then and there, on the said sixth of January, &c. at M. &c. present before me the said justice, to answer and make his defence to the said information, and the offence therein charged upon him as aforesaid.

And he the said T. S. having heard the same, is asked by me the said justice, if he can say any thing for himself why he the said T. S. should not be convicted of the premises above charged upon him in form aforesaid.

And the said Thomas Stone pleadeth that he is not guilty of the said offence. Nevertheless, on the said sixth of January, &c. at M. &c. two credible witnesses, to wit, J. C. of, &c. and J. W. of, &c. come before me the said justice, in their own proper persons; and before me the said justice, in the presence of the said T. S., they the said J. C. and J. W. being respectively then and there on the same day and year aforesaid at M. &c. duly sworn, &c. did depose, &c." (The conviction then set forth the evidence of the witnesses as to the fact of the defendant's *having killed a pheasant* on Saturday the third of January, 1801,

the more compendious form here exhibited, of which he says, "it was strictly scrutinized, and approved."—See 1 E. R. 639.—also Boscaw. 157, and Nares, 50.

in the parish of M, &c. but *not stating any evidence* * of the disqualification of the defendant.)

And thereupon, the said T. S. being asked by me the said justice if he had any thing to say, or can produce any evidence in answer to the several matters deposed to by the said J. C. and J. W. as aforesaid; he the said T. S., pretends and represents to me the said justice, that he the said T. S., on the said third of January, &c. was qualified, both in his own right and in right of his wife to kill game, but doth not produce any evidence thereof; nor that he the said T. S. on the said third of January, &c. had any lands or tenements, or any other estate of inheritance in his own right or his wife's right, of the clear yearly value of 100*l.* per annum, or for term of life, or any lease or leases for ninety-nine years, or for any longer term, of the clear yearly value of 150*l.*; nor that he the said T. S. was the son and heir-apparent of an esquire, or of other person of higher degree, nor that he was the owner or keeper of any forest, park, chase, or warren, or game-keeper to any lord or lady, of or for any manor or manors, nor in any other manner qualified, in his own right, to keep or use any engine to kill and destroy the game of this kingdom; nor doth he produce any sufficient evidence thereof in answer to the several matters deposed to by the said J. C. and J. W. as aforesaid; nor doth the said T. S. require any further time for that purpose.

And thereupon it manifestly appears to me the said justice, that the said T. S. is guilty of the offence above charged upon him, in and by the said information. Wherefore I, the said justice, on the said sixth of January, &c. at

* It was long doubted whether the qualification of defendant was necessary to be negated by the evidence, as well as in the information; but, by the judgment in this very case, as also in those of *R. v. Pickles*, (*post*, 764,) and others (see especially *Nares*, p. 55,) it is now holden sufficient to negative them in the information, if the *adjudication* do but convict the defendant of the offence *as charged against him in such information*; the repetition of the charges not making the offence more clear or strong: beside that, from the nature of the case, it cannot be expected that the witnesses can prove the negative, but the *onus* must be on the defendant to prove the affirmative.

M. &c., on the oaths of two credible witnesses so taken before me as aforesaid, do adjudge him the said T. S. to be guilty of the offence aforesaid, and do thereupon convict him of the same; and do declare and adjudge, that he the said T. S. hath forfeited the sum of five pounds for the same offence, to be distributed as the statute in that case made and provided doth direct.

.R2

J. WEBSTER. L. S.

For keeping
and using a
lurcher and
other dogs to
destroy the
game.*

County of York, West Riding, (to wit.) Be it remembered, &c. that on the first day of February, in the eighteenth year, &c. at Calverly, in the Wst Riding of the county of York, Robert Hardman of Wadsworth, in the said riding, yeoman, in his proper person cometh before me Sir Walter Calverley, Bart. one of the justices of our said present Sovereign Lord the King, assigned, &c. then and there maketh information on oath before me the said justice, that J. P. of Wadsworth aforesaid, the said J. P. not having lands and tenements, or some other estate of inheritance in his own or his wife's right of the clear yearly value of 100*l.* or for term of life, nor having lease or leases of 99 years, or for any larger term, of the clear yearly value of 150*l.* nor being the son and heir apparent of an esquire, or other person of that description, nor being overseer or keeper of any forest, park, chase, or warren, being stocked with deer or conies for his necessary use, in respect of said forest, park, chase, or warren, *nor being gamekeeper of any lord or lady of any lordship or manor, nor being immediately employed or appointed to take and kill the game for the sole use or immediate benefit of such lord or lady, nor being in any other manner whatsoever qualified, empowered, licensed, or authorised by the lord of the manor either to take, kill, or destroy any sort of game whatsoever, either for himself or for any other person or persons whatsoever, nor to keep or use any greyhound, setting dogs,*

* Nares, p. 52. This case, it seems, called into controversy the necessity of negating the constructive qualification by deputation; as also that of repeating the negations in the evidence, both of which supposed necessities were negatived by the judgment of the court.

harriers, lurchers, terriers, or any other engine to kill and destroy the game, on the said first day of January, in the eighteenth year aforesaid, at Wadsworth aforesaid, within the West Riding aforesaid, one lurcher and divers other dogs did unlawfully keep and use for the destruction of the game, and with the said lurcher *and other dogs* did then and there take and kill one hare, contrary to the form of the statute, &c.; and the informant then and there prays that the said J. P. may be convicted of the said offence: Whereupon the said J. P. on the eighth day of February had due notice given him of the said information, and being duly summoned to appear before me the said justice, at my dwelling-house at Calverly aforesaid, in the said riding, on the eleventh day of the said month of February, in the eighteenth year of the reign, &c. to answer and make his defence to the said information, and the offence therein charged upon him; and thereupon afterwards, that is to say, on the said eleventh day of February, &c. John Dewhurst of Wadsworth aforesaid, then being a credible witness, cometh before me the said justice in his proper person, and takes his corporal oath upon the Holy Evangelists of God, to say and depose the truth touching and concerning the premises in the said information specified; (I the said, &c. having full power, &c.) and the said J. D. being so sworn then and there upon his oath so taken as aforesaid, depones and swears of and concerning the premises in the said information specified, that within three months before the said information, to wit, on the thirty-first day of January, in the eighteenth year, &c. at Wadsworth aforesaid, in the riding aforesaid, the said J. P. not having, &c. (*negating the several qualifications the same as in the information*) did keep and use *one lurcher and other dogs* for the destruction of the game, and with the said lurcher and other dogs did then and there take and kill one hare, contrary to the form of the statute, &c.: And thereupon the said J. P. after due notice and summons to him given as aforesaid, doth not appear before me the said justice, but maketh default; but the same being now fully and duly proved before me the said justice, upon the oath of the said J. D. a credible witness as aforesaid, it manifestly appears

to me the said justice, that the said J. P. is guilty of the crimes above charged upon him in the said information. It is, therefore, adjudged by me the said justice, that the said J. P., upon the testimony of the said J. D., a credible witness as aforesaid, upon his said oath so taken before me the said justice as aforesaid, be convicted, &c.; and that the said J. P. do forfeit the sum of 20s. for the said offence, to be levied and distributed according to the form of the statute in such case made and provided. In witness, &c.

Conviction of
an innkeeper
for having a
partridge in his
possession, and
selling the same
as an inn-
keeper, 5 Ann.
c. 14, s. 2. 28
Geo. 2. c. 12.
2 Geo. 3. c. 19.

Lancashire, } Be it remembered, that on the 30th day of
(*to wit.*) } October, in the twenty-third year of the reign
of our Sovereign Lord George the Third, by the grace of
God, &c., at Warrington, in the county of Lancaster,
D. Poole, of, in the county of Cheshire, esq.
cometh in his proper person before me, C. O., clerk, one of
the justices of our said Lord the King, assigned to keep the
peace of our said Lord the King, in and for the said county of
Lancaster, and also to hear and determine divers felonies,
trespasses, and other misdemeanors committed within the
said county, and then and there giveth me the said justice
to understand and be informed, that within three months
now last past, that is to say, on the second day of October,
in the twenty-second year of the reign of our said Lord
the present King, at the parish of Manchester, in the
said county of Lancaster, R. A. of Manchester aforesaid,
innkeeper, being a person not then, &c. (*see the general
form, ante.*) and being then and there an innkeeper, un-
lawfully had in his custody two partridges, and did then and
there sell * (*or "offer to sell," as the case may be,*) the
same partridges, contrary to the form of the statute in such
case made and provided; and the said D. P., the said in-
formant, prayeth that the said R. A. be convicted of the
said offence above laid to his charge: whereupon the said
R. A., after having been duly summoned in this behalf to
answer and make his defence to the said information and

* Let this be according to the fact. If he only had them in his custody, omit the rest. If he actually sold them, omit the offer. If he offered only, omit the sale.

offence therein charged upon him before me the said justice, afterwards, that is to say, on the 13th day of November, in the twenty-third year aforesaid, at Warrington aforesaid, in the county of Lancashire, appeareth, and is present before me the said justice, in order to answer and make good his defence to the said information and offence therein charged on him as aforesaid, and he the said R. A., having heard the same, is asked by me the said justice, if he can say any thing for himself, why he the said R. A. should not be convicted of the premises above charged on him, in form aforesaid, who pleadeth that he is not guilty of the said offence: nevertheless, on the said 13th day of November, in the twenty-third year aforesaid, in the said county of Lancaster, one credible witness, to wit, T. B. of H. in the said county of Lancaster, cometh before me the said justice, in his own proper person, and before me the said justice, the said T. B. being then and there, to wit, on the day and year last aforesaid, at Warrington aforesaid, duly sworn touching the premises, upon the Holy Gospel of God, upon his corporal oath, to him then and there administered by me the said justice (I, the said justice, then and there, having full power and authority to administer the said oath to the said T. B.) deposeth and sweareth, and upon his oath aforesaid affirmeth, in the presence of the said R. A., that within three months next before the said information was made before me, by the said informant, as aforesaid, to wit, on the said second day of October, in the twenty-second year aforesaid, at the parish of Manchester aforesaid, he the said R. A. being a person not then having lands, (*pursue the words of the information exactly, to the words, "in such case made and provided."*) Whereupon all and singular the matters and things in the said information and evidence contained being by the said R. A. heard and fully understood, and he the said R. A., being by me the said justice asked, what he hath to say or offer in his defence against the said information and offence and in answer to the evidence given as above-mentioned, and what he has to say, why he should not be convicted of the premises so charged upon him, and forasmuch as upon hearing and

fully understanding all and every the matters and things by the said R. A. alledged and proved in his defence, touching the premises in the said information specified, it manifestly appears to me the said justice, that the said R. A. is guilty of the premises above charged upon him in the said information: it is therefore adjudged by me the said justice, upon the testimony of the said T. B., a credible witness, upon his oath, before me the said justice, so taken as aforesaid, that the said R. A., on the said second day of October, in the twenty-second year aforesaid, at the parish of Manchester aforesaid, within three months next before the said information was made before me the said justice by the said D. P. as aforesaid, unlawfully had in his custody two partridges, and did then and there sell (or, "offer to sell") them, contrary to the form of the statute in such case made and provided, and that the said R. A. had not then, &c. (*negating all the qualifications*) nor then was a person in any manner whatsoever qualified to kill game, and was then and there an inn-keeper; and thereupon I the said justice, upon the said thirteenth day of November, in the twenty-third year aforesaid, at Warrington aforesaid, do convict the said R. A. of the offence aforesaid, in and by the said information charged against him, the said R. A. is hereby convicted thereof, by me the said justice, upon the oath of one credible witness, according to the form of the statute in such case made and provided; and I the said justice do adjudge, that the said R. A. for his said offence, hath forfeited the sum of 10*l.* of lawful money of Great Britain, that is to say, the sum of 5*l.* for each of the said partridges; and I do adjudge that one half of the said sum be paid to the said informant D. P., and that the other half of the said sum be paid to the poor of the parish of Manchester, where the said offence was committed, according to the form of the statute in that case made and provided. In witness whereof, &c.*

5 Ann. c. 14.
§ 2. 5*l.* for
each partridge,
&c.
5 Ann. c. 14.
§ 2.

* This conviction is from Paley's Precedents, and that author observes, that it was drawn by a gentleman eminent at the bar, by whom the following observations were subjoined:—

"The statute 5 Ann. c. 14. § 2. which imposes a penalty upon any

CONVICTIONS—(Gaming)

County of } Be it remembered, that on, &c. Erroneous conviction for gaming, by playing at bowls by a labourer, under 23 Hen. 8. c. 9.*
 (to wit.) } S. P. and J. B. of, &c., came before
 me W. C., one, &c., and gave me to understand and be

higler, chapman, *inn-keeper*, having partridges, &c. in their possession, or who shall buy, sell, or offer to sell the same, makes no express distinction between such as are qualified by estate, and such as are not; but it was thought safer to negative all the qualifications. If, indeed, the defendant actually sold the partridges, or offered them for sale, the case would come within 28 Geo. 2. c. 92. which inflicts the penalties upon *selling*, whether the person be qualified or not; and in such case it will be proper to omit the whole of what is stated in the above conviction respecting the qualifications, but it was not thought proper to consider the using the partridges in the house by an innkeeper, in providing for his guests, as an actual sale of them within the latter act.*

Now, however, by 58 Geo. 3. c. 45. entitled, "An act for the more effectual prevention of offences connected with the unlawful destruction and sale of Game," the buying game by persons of *all descriptions* is declared to be an offence, and punishable by conviction, as follows:

"Whereas the selling, exposing, or offering to sale, any hare, pheasant, partridge, moor heath game, or grouse, is by law prohibited; and whereas it is expedient, for the more effectual prevention of offences connected with the unlawful destruction and sale of Game, to provide by law as herein-after enacted:—Be it therefore enacted, &c. That if any person or persons whatsoever, *whether qualified or not qualified* to kill Game, *shall buy* any hare, pheasant, partridge, moor heath game, or grouse, every such person or persons who shall so offend, and thereof shall be convicted before any one or more justice or justices of the peace, magistrate or magistrates, acting for the county, riding, city, town, borough, division, or place where such offence shall be committed, by the oath of one or more credible witness or witnesses, shall, for every hare, pheasant, partridge, moor heath game, or grouse, so bought as aforesaid, forfeit and pay the sum of five pounds, one half to be paid to the informer, and the other to the poor of the parish where such offence shall be committed; the same to be levied by distress and sale of the offender's goods, by warrant under the hand and seal of the justice or justices, magistrate or magistrates, before whom the offender shall be convicted, rendering the overplus of such distress and sale (if any) to the party or parties, after deducting the charge of making the same; provided that such conviction be made within six calendar months after such offence committed.

"And for the better discovery of such person or persons as shall *buy or sell* any hare, pheasant, partridge, moor heath game, or grouse, be it

informed that T. C. of, &c., labourer, on the 16th of August, 1773, did use and play at a certain unlawful game with bowls and pins, called bowl-rushing, with divers liege subjects of our said Lord the King, and did then and there receive divers sums of money of the said subjects, playing at the said game, against the form of the statute, &c., and against the peace, &c., and pray that the said T. C. may be convicted of the said offence: whereupon afterwards,

further enacted by the authority aforesaid, that from and after the time of the passing of this act, any person that shall *buy, sell, or offer to sell, or have unlawfully in his possession*, any hare, pheasant, partridge, moor heath game, or grouse, and shall make discovery of any person that hath within six calendar months *bought or sold* any such game as aforesaid, so as *any one* shall be convicted of such offence by virtue of *this or any other* statute now in force, such discoverer shall be discharged of and from all pains, forfeitures, and penalties to which he may be and shall have become liable, before and at the time of the making such discovery, by reason of the *buying or selling or offering to sell, or having unlawfully in his possession*, any such game as aforesaid, any thing in any former statute contained to the contrary notwithstanding; and shall receive the same benefit and advantage as any other informer shall be entitled to by virtue of this act, for such discovery and information; provided that nothing in this act contained shall be held or construed to discharge such discoverer of or from any pains, forfeitures, or penalties in respect whereof a prosecution shall be actually pending, or conviction or judgment shall have been had against him, at the time of making such discovery as aforesaid."

The remaining clause provides that the penalties under this act may be *sued for* to the sole use of the prosecutor.

* By the statute of 33 H. 8. c. 9. "no person shall for his gain, lucre, or living, keep any common house, alley, or place of bowling, cloyting, cloyth, cayls, half-bowl, tennis, dicing table, carding, or any unlawful game, *then, or thereafter to be*, used, on pain of forfeiting 40*s.* a-day." § 11. And every artificer, husbandman, apprentice, labourer, servant, journeyman, fisherman, or waterman playing at any of the said games, out of Christmas (and not being by servants within the precincts of their masters' houses, gardens, or orchards, such masters having 100*l.* *per annum*, in manors, lands, tenements, or yearly profits, and giving leave or licence to such servants so to play, § 23.) under pain of forfeiting 20*s.* for every time, § 16. It has been previously noticed, under title "Vagrants," that, "all persons playing, or betting, at any unlawful games or plays," are among the descriptions of rogues and vagabonds, in, and liable to the punishment of, the 17 Geo. 5. p. 5.

on, &c., the said T. C. being apprehended and brought before me, &c., to answer to the said charge, &c. the said T. C. is asked by me if he can say any thing for himself, why he the said T. C. should not be convicted of the premises above charged upon him, &c. and thereupon the said T. C., of his own accord, fully acknowledges the premises, &c. to be true as charged, and does not show to me any sufficient cause why he should not be convicted thereof. Whereupon all and singular the premises, &c. being considered, and due deliberation being thereunto had, I do adjudge and determine that the said T. C. is guilty of the premises, &c., *and that the said T. C. is therefore an idle and disorderly person, and is also therefore a rogue and vagabond* within the true intent and meaning of the statutes in that case made and provided. And the said T. C. is accordingly by me convicted of the offence charged upon him in and by the said information, *and of being an idle and disorderly person, and a rogue and vagabond*, in form aforesaid; and I do hereby adjudge and order that the said T. C. be therefore *committed to the house of correction*, there to remain for the space of one month, being a less time than until the next general-quarter sessions of the peace, or until the said T. C. shall find sureties to be bound in recognizance to appear before the next quarter sessions, and for his good behaviour in the mean time.*

* The court at first quashed this Conviction, on an objection that it was not alledged in the information, that the playing at bowls was *out of the defendant's own orchard*, and it is only unlawful *sub modo*. Afterwards, in the said term, Lord Mansfield said, a doubt had arisen, "whether, as by another part of the sixteenth section of 33 H. 8. it is made unlawful for a labourer to play at any time out of *Christmas*, the conviction was not good, as the defendant was stated to be a labourer, and the playing laid on the 16th of *August*?" but his lordship observed, "the punishment appeared to be under the vagrant act, 17 Geo. 2. c. 5. § 1. therefore desired it might be spoken to again upon this point, and also whether it was a good adjudication under this latter statute." Afterwards Mr. J. Aston (Lord Mansfield being absent) delivered the opinion of the court: "This conviction is a jumble of confusion of charges and punishments; it is a conviction for playing at bowls, and the punishment inflicted is imprisonment as an idle and disorderly per-

Conviction for
keeping a ha-
zard-table,
on 12 Geo. 2.
c. 28. *

County of } Be it remembered, that on the
(to wit.) } day of, in the year of
the reign of our Sovereign Lord King George the Third,

son. The statute 33 Hen. 8. c. 9. § 16. lays a penalty of 20s. on every labourer playing at bowls out of *Christmas*: the punishment is therefore clearly not under this statute. The statute 17 Geo. 2. c. 5. § 1. describes four kinds of idle and disorderly persons* and being an explanatory act, we cannot go out of it. Now *bowling is not an offence within any of these descriptions; consequently the defendant is not punishable as an idle and disorderly person*, but the punishment is under this latter statute."—The conviction was therefore quashed. Cowp. R. 35.

* By the 12 Geo. 2. c. 28. "If any person shall erect, set up, continue, or keep, any office, or place, under the denomination of a sale of houses, lands, advowsons, presentations to livings, plate, jewels, ships, goods, or other things by way of lottery, or by lots, tickets, numbers, or figures, cards, or dice; or shall make, print, advertise, or publish proposals or schemes for advancing small sums by several persons, amounting in the whole to large sums, to be divided among them by chances of the prizes in some public lottery established by act of parliament, or shall deliver out tickets to persons advancing such sums, to entitle them to a share of the money so advanced, according to such proposals or schemes; or shall expose to sale any houses, lands, advowsons, presentations to livings, plate, jewels, ships, or other goods, by any game, method, or device whatsoever, depending upon, or to be determined by any lot or drawing, whether it be out of a box or wheel, or by cards or dice, or by any machine, engine, or device of chance of any kind whatsoever, shall forfeit 200*l*." § 1.

Moreover, "every such sale of houses, lands, advowsons, presentations, plate, jewels, ships, goods, or other things, by any game, lottery, machine, engine, or other device, depending upon any chance or lot, shall be void; and the same being exposed to sale in manner aforesaid, shall be forfeited to such persons as shall sue for the same in any court of record, or at the assizes."

And by 18 Geo. 2. c. 34. "no person shall keep any house or place for playing, or permit any person within such house to play, at any prohibited game, with cards or dice, under the penalties of 12 Geo. 2. c. 28." § 1.

"And every person who shall be an adventurer in any of the said games, lotteries, or sales, shall forfeit 50*l*." 12 Geo. 2. c. 28. § 3.

"Which penalties may be recovered before one justice, or mayor, who, on confession, view, or oath of one witness, may convict such offender, and levy such penalty by distress, to be applied, after deducting the charges, one third to the informer, and two thirds to the poor; and for want of sufficient distress, and in case such offender do not pay

at the parish of, in the city of, in the county of, G. H. W. M., of the parish of St. Olave, in the city aforesaid, in the said county, gentleman, in his own proper person cometh before us Sir H. J. knight, and M. P., esquire, two of his Majesty's justices assigned to keep the peace of our said Sovereign Lord the King, in and for the said city, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the

or secure the same, he may be committed to gaol for any time not exceeding six months." § 1. 8.

Persons aggrieved *may appeal to the next sessions*, giving reasonable notice to the prosecutor, and entering into recognizance before a justice with two sureties to try such appeal at such sessions, who shall finally determine the same; and in case such conviction or judgment be affirmed, the defendant shall have treble costs. § 5.

"And the game of passage, and every other game with one or more die or dice, or with any other instrument, engine, or device in the nature of dice, having one or more figures or numbers thereon (back-gammon, and the other games played with the back-gammon tables only excepted,) shall be deemed games or lotteries by dice, within the said act of 12 Geo. 2. c. 28."—13 Geo. 2. c. 19. § 9.

Also by the 18 Geo. 2. c. 34. "no person shall keep any house, room, or place for playing, or suffer any person within such place to play at roly-poly, or any other game, with cards or dice already prohibited by the laws of this realm; and if any person shall keep such house, or suffer any person to play at roly-poly, or other game with cards or dice prohibited by law, he shall be liable to the penalties and prosecution, as by the said act of the 12 Geo. 2. c. 28."—18 Geo. 2. c. 34. § 1.

"And if any person shall play at roly-poly, or any game with cards or dice prohibited by law; he shall be liable to the penalties and prosecution, as by the said act." § 2.

By 42 Geo. 3. c. 119. all games or lotteries called *Little Goes*, are declared to be public nuisances. § 1.

"And no person shall keep, or suffer to be kept, in his house, &c. any office or place for any game or lottery called a *Little Goe*, or for any other lottery whatsoever, not authorized by parliament, on pain of 500*l.* for each offence, recoverable in the Exchequer by the attorney-general to the use of the King; and such person shall be deemed a rogue and vagabond within 17 Geo. 2. c. 5. And persons employing others to carry on such transactions shall be deemed rogues and vagabonds, and be punishable as such." § 2. 4.

Provided that persons not proceeded against for the penalty, shall be punishable as rogues and vagabonds within the said 17 Geo. 2. § 3.

said city committed, and now here exhibiteth before us the said justices a certain complaint and information, and therein complaineth and giveth us to understand and be informed, that R. Lyon, yeoman, of New-street, in the parish of St. John, in the city of G. aforesaid, in the county aforesaid, did, after the twenty-fourth day of June, 1739, to wit, on the 20th day of May, A. D., 1810, at a certain house in New-street aforesaid, set up, maintain, and keep, a certain fraudulent game, to be determined by the chance of dice, under the denomination of the game of Hazard, against the form of the statute in such case made and provided; and afterwards, on the 2d day of June, in the year aforesaid, at the parish of St. John aforesaid, in the city aforesaid, in the said county of G. the said R. Lyon having been duly summoned in this behalf to appear before us the justices aforesaid, appeareth and is present, in order to make his defence against the said charge contained in the said information, and having heard the same read, the said R. Lyon is asked by us the said justices if he can say any thing for himself why he should not be convicted of the premises above charged upon him in form aforesaid, who pleads that he is not guilty of the said offence: nevertheless, on the said 2d day of June, in the year aforesaid, at the parish of St. John aforesaid, in the city aforesaid, in the said county, three credible witnesses, to wit, A. B., of the parish of M. in the said county of G., gentleman; C. D. of the parish of N., in the said city of G., in the county of G. aforesaid, labourer; and E. F. of the parish of St. John aforesaid, in the said city and county of G., yeoman, came before us justices aforesaid, and before us the said justices, upon their oaths on the Holy Gospel to them respectively then and there by us the said justices administered, depose, swear, and on their oaths aforesaid, in the presence of the said R. Lyon, say as followeth: And first, the said A. B., on his oath aforesaid saith, that on the 20th day of May last past, he was at the house of the said R. Lyon, in New-street aforesaid, that there were then many persons playing at a game called hazard in the said house for money; that the said R. Lyon was then present there during the play-

ing of the said game, and acted as master of the hazard-table there; and the said A. B. upon his oath further saith, that he hath frequently been at the said house of the said R. Lyon, and hath often lost large sums of money there at hazard; that on those occasions the said R. Lyon hath always acted as master of the said hazard-table, and that whenever any disputes arose at the said hazard-table respecting the game or other matters, he was always appealed to, and decided them. And the said C. D. upon his oath saith, that he is one of the constables appointed by the mayor and aldermen of the city of G. for the said city, and that on Friday, the 20th day of May last past, he went to the said house of the said R. Lyon, in New-street aforesaid; that more than twenty persons were then and there seated round a hazard-table; that the said C. D. took from the said table a dice-box, and two pair of dice, and several counters, with the letters R. L. upon them, which he now produceth; that the said R. Lyon was then and there present, and endeavoured to prevent and hinder the said C. D. from taking and seizing the said dice and dice-box and counters. And the said E. F. upon his oath aforesaid saith, that he is, and hath been for several years past collector of a rate in the city of G., called the conduit assessment, which is a rate charged upon, and paid by, every inhabitant householder in the said city of G., for a supply of water conveyed to the house of every such inhabitant householder in the same respectively; that he hath during that time constantly received the said rates for the said R. Lyon's house in New-street, in the said parish of St. John, in the said city, and hath given him the said R. L. receipts for the same in his own name as occupier of the said house: and thereupon the said R. Lyon, on the 2d day of June aforesaid, in the year aforesaid, before us the justices aforesaid, by the oaths of the aforesaid credible witnesses, according to the form of the statute aforesaid, is convicted of the offence aforesaid, and for his said offence hath forfeited the sum of 200*l.* of lawful money of Great Britain, to be distributed as the statute aforesaid doth direct. In witness whereof we the said justices to

this present record of conviction aforesaid have set our hands and seals, at the parish of, &c., in the county aforesaid, the said, &c.

Conviction of
a mountebank
for exposing to
sale plate by a
device of
chance de-
pending on a
lottery, under
12 Geo. 2. c. 28.

County of } Be it remembered, that on the
(to wit.) } day of, in the year of the
reign of our present Sovereign Lord George the Third, by
the grace of God, &c., and so forth, at, in the
county of aforesaid, one R. B. of, in the
county aforesaid, butcher, in his own proper person, comes
before me Sir T. M., knight, one of the justices of our said
Sovereign Lord the King, assigned to keep the peace of
our said Lord the King, in and for the said county, and
also to hear and determine divers felonies, trespasses, and
other misdemeanors in the same county committed, and as
well for the poor of the parish of aforesaid, where
the offence hereinafter mentioned was committed, as for
himself, exhibits unto me the justice aforesaid, a certain
complaint and information, and thereby informeth me, the
said justice, that P. E. of aforesaid, in the county
aforesaid, pretended practitioner in physic, did, after the
24th day of June, 1739, to wit, on the day of,
last past, at aforesaid, in the county aforesaid, ex-
pose to sale plate, to wit, one silver tankard, three silver
tea-spoons, and one gold ring, by a method depending
upon, and to be determined by, a lottery or drawing, by a
device of chance, against the form of the statute in that
case made and provided, whereby the said P. E. hath for-
feited the sum of 200*l.* of lawful money of Great Britain;
to be levied, paid, and distributed, as the law in that be-
half directs; and thereupon the said R. B. prays judgment
in the premises, and that he may have one-third part of the
said forfeiture, according to the form of the statute in such
case made and provided, and that the said P. E. may be
summoned to answer the said premises, and to make de-
fence therein before me the said justice. And afterwards,
to wit, on the day of aforesaid, in the said
. year of the reign of our said Sovereign Lord the
King, at aforesaid, in the county aforesaid, being

the time and place appointed by my summons on the above written information, the said P. E. having been by me duly summoned, appeareth, and pleadeth that he is not guilty of the offence, in manner and form as in the above written information is mentioned and set forth. Nevertheless, on the said day of aforesaid, in the year aforesaid, at aforesaid, in the county aforesaid, one credible witness, to wit, W. B. of, in the county aforesaid, tailor, cometh before me the said justice, and before me the said justice upon his corporal oath upon the Holy Gospel of God, by me the said justice administered, in the presence and hearing of the said P. E. deposeth, sweareth, and saith, that on the said day of last past, at aforesaid, in the county aforesaid, the said P. E. did exhibit and expose to sale on a certain stage set up and placed in the market-place there, by the order of him, the said P. E. one silver tankard, three silver tea-spoons, and one gold ring, as prizes, by a method depending upon, and to be determined by, a lottery or drawing, by a device of chance, and thereby obtained a considerable sum of money, in the manner following, that is to say, that he, the said P. E., did on the said day of last, at aforesaid, in the county aforesaid, in an open and public manner, on the said stage so erected and placed in the market-place as aforesaid, receive and take of and from several persons, to wit, one hundred persons, and more, then and there assembled, from each one shilling, together with a mark, to wit, a handkerchief from one, from another an apron, and from others each a glove, all which said marks were taken or placed by the said P. E., in a heap or parcel together upon the said stage; and when no more money or marks were thrown up to the said P. E. upon the said stage; he the said P. E. took out a heap or parcel of packets and papers containing small boxes of salve and powders, then and there lying on the said stage, so many of the same packets or papers of boxes of salve and powders, as there were prizes intended to be delivered out, to wit, three prizes, that is to say, one silver tankard, three silver tea-spoons, and one gold ring, then opened the same and

put into each of them another paper containing a box of salve and a paper of powders, on which was placed, written, or printed, certain seals, letters, or marks, denoting it to be a prize, and what such prize consisted of, and that whoever had the lot, good fortune, or chance, to receive such packet containing a box of salve and a paper of powders, would be entitled to such prize; then closed up the said packets or papers of salve and powders so opened for the purpose aforesaid, and put them to the other packets or papers of salve and powders in the heap on the said stage which contained no prizes, and mixed them altogether, making the number of packets or papers of salve and powders equal to the number of marks that were thrown up, and shillings that were received; and then called two persons from among the crowd, and employed the said two persons to take up a packet or paper of salve and powders out of the heap on the said stage, which was delivered to the said P. E., who then and there took up one of the said marks, proclamation then being made for the owner thereof to claim the same, to whom was delivered the mark, together with one of the said packets or papers of salve and powders so drawn and taken up by the said persons as aforesaid; and the said P. E. proceeded in the same manner until the said persons had drawn up all the said packets or papers of salve, and the said P. E. and his servants had delivered out all the said marks, together with the said packets or papers of salve and powders, as well those containing the seals, letters, or marks, denoting them to be prizes as aforesaid, as others so drawn from the heap on the said stage by the said persons as aforesaid: after which the fortunate holders of lots to whom the said packets or papers of salve and powders fell which contained the boxes of salve and papers of powders whereon was placed, written, or printed, the said seals, letters, or marks as aforesaid, attended at or on the said stage, and had their respective prizes delivered to them by the said P. E.: and thereupon the said P. E. is by me the said justice asked what he hath to say or allege in his defence; but he the said P. E. does not produce, nor does he say he can procure any evidence to contravene or contradict the proof

resaid; nor does he shew unto me any sufficient cause why the said P. E. should not be convicted of the premises resaid; wherefore it manifestly appears to me the tice aforesaid, that the said P. E. is guilty of the pre-
ses charged upon him in and by the said information: it
herefore considered and adjudged by me the said justice,
it the said P. E. be convicted, and he is by me accord-
gly convicted of exposing to sale plate, that is to say,
e silver tankard, three silver tea-spoons, and one gold
g, by a method depending upon, and to be determined
, lot, or drawing by a device of chance, against the form
the statute in that case made and provided, and for his
ence aforesaid hath forfeited the sum of 200*l.* to be le-
ad, paid, and distributed as the statute aforesaid doth
rect. In witness whereof I the said justice, to this pre-
nt record of Conviction, have set my hand and seal, at
..... aforesaid, in the county aforesaid, the day
....., in the year of our Lord

CONVICTIONS—(*Hawkers and Pedlars*).

ity and County of the } Be it remembered, that on, &c., Erroneous
City of Litchfield } at, &c., one T. Preston, gentleman, conviction of a
(to wit.) } cometh in his proper person before pedlar * for
e, W. B., &c., and giveth me the said justice to understand, selling without
c. that one Thomas Little, on the 24th day of Oct., A. D. a licence.
757, in the parish, &c. was found offering to sale silk hand-
erchiefs, and *trading as an hawker, pedlar, or petty chap-*
ian,† and that the said T. Little did then and there offer

* This Conviction was much canvassed (see 1 Burr. R. 613.) and has,
y the determination on it, settled the right interpretation of the statute
n which it was erroneously formed; (see Paley, 69).

† The words of the statutes of 9 & 10 W. 3. are, "trading person;
ing from town to town, or, to other men's houses, and travelling either
n foot, or with horse, carrying to sell, or exposing to sale." The
ourt therefore said this description of crime, "trading as a hawker and
edlar," was a conclusion of law, and too general; that it was a ne-
cessary allegation to bring him within the description of the statute to
ate that, "he went from town to town, or to other men's houses." No
vert act is laid of trading as a Hawker and Pedlar. It has also been
bserved, that a single act of selling does not constitute a trading in

to sell to him the said T. Preston a parcel of silk handkerchiefs, and that the said T. Little did not, although requested to do, produce any licence, as the law in that case made and provided * directs, to qualify him for his said trading, and the said T. Preston thereupon then and there prayed that the said T. Little might be convicted, &c.; whereupon the said T. Little, being brought before me, and being then and there present, and having heard the same information read, and being charged therewith, he the said T. Little is then and there asked by me the said W. B. if he hath any thing to say why he the said T. Little should not be convicted of the said offence so charged upon him in form aforesaid, according to the form of the statute, &c.; whereupon he, the said T. Little, doth now here freely and voluntarily confess before me the said W. B. that *he did offer to sell silk handkerchiefs to the said T. Preston*, in such manner as is mentioned in the said information, and that he hath no licence for selling thereof; and the said T. Little is now here required by me the said W. B., the justice aforesaid, to produce a licence granted to him to empower and qualify him to travel as trade, pursuant to the statute in that behalf made and provided, and he, the said Thomas Little, doth not produce before me any such licence, or any licence granted to him in that behalf, and that the said T. Little doth not pretend or alledge that he is a real worker or maker of the said goods, or the child, apprentice, agent, or servant of or to any such worker or maker, nor doth he alledge any other matter in his defence. Wherefore, &c. I do adjudge that the said T. Little is an hawker within the true intent and meaning of the statute in such case made and provided:

any understanding of the word; but are *several* acts of trading, if stated as this Conviction states the charge would not bring the offence within the description of the act.

* It is of the essence of the crime of not producing a licence, that he was such a person as ought to take out a licence, but this mode of stating his trading does not shew that he was *such* a trader; but otherwise refusing to produce a licence is to be taken as sufficient evidence that the party has not one. *R. v. Smith, 3 Burr. 1475.*

id it manifestly appeareth to me the said justice, that he the
id T. Little is guilty of the said offence in the said in-
formation above laid to his charge, in the manner and
form as by the said information is above alledged. There-
fore it is considered, &c. that the said T. Little be and is
convicted of the said premises in the said information
specified above laid to his charge, according to the form of
the statute, &c.; and that he do forfeit for his said offence
the sum of, &c., to be levied and paid according to the
form of the statute, &c. In witness whereof, &c.

County of } Be it remembered, that on the Conviction ac-
(to wit.) } day of, in the year of our Lord cording to
....., at, in the county of, A. B. came 50 Geo. 3.
before me C. D., one of his Majesty's justices of the peace c. 41.*
for the said county, residing near the place where the of-
fence herein after mentioned was committed, and informed
me that E. F. of, in the said county of,
were set forth the fact for which the information is laid,]†

* By this statute it is declared, that a conviction according to this
form, or to that effect, *mutatis mutandis*, (as the case shall happen to
be,) shall be good and effectual without stating the evidence, and with-
out stating more than the substance of the offence. But the descrip-
tion of the substance of such offence being necessarily left blank, it
must be filled up much after the same manner as was necessary under
the former statute, with such additional circumstances as are required by
the present one, or by 29 Geo. 3. c. 26., of which this of the 50 Geo. 3.
is little more than a transcript, except so far as concerns the stamp duty,
and the person authorized to grant the licences.

† It has been already seen, in the observations on the last preceding
conviction, what averments are necessary to bring the defendant within
the general description of a Hawker and Pedlar. By the statute under
which this form of conviction is allowed, several exceptions are intro-
duced as follow, (which are negatived respectively, according to the
subject matter of the charge. See Paley, p. 63. App.). But see the
same author, p. 83; and *ante*, this work, p. 678.

After the first day of August, 1810, it shall not be lawful for any
hawker, pedlar, petty chapman, or any other trading person going from
town to town, or to other men's houses, and travelling either on foot or
with horse or horses, either by opening a room, or shop, and exposing
for sale any goods, wares, or merchandize, by retail, in any town, parish,

whereupon the said E. F., being duly summoned to answer the said charge, appeared before me (and having heard the charge contained in the said information, acknowledged and voluntarily confessed the facts therein stated to be true,) but in his [or her] defence alledged [*he set forth the substance of the defence,*] or voluntarily confessed the said charge to be true, or did not make any defence against the said charge, whereupon the same was fully proved on the oath of G. H., a credible witness, and said that he [or she] was not guilty of the said offence, whereupon the same was fully proved on the oath of G. H., a credible witness [*or as the case shall be*], or did not appear before me pursuant to the said summons, but the said charge was fully proved on the oath of G. H., a credible witness, [*or as the case shall be*], and therefore it manifestly appearing to me, that the said E. F. is guilty of the offence charged in the said information, I do hereby convict him [or her] of the said offence, and do adjudge that he [or she] hath forfeited the sum of, or his [or her] licence

or place, such person not being a householder there, or the same not being an usual place of his or her abode, or by any other means or device to vend or sell either by himself, or by any auctioneer, whether licensed or not, broker, appraiser, agent, servant, or other person on his behalf any goods, wares, or merchandize whatsoever, by outcry, knocking down of hammer, candle, lot, parcel, or any other mode of sale at auction, or whereby the best or highest bidder shall be deemed to be the purchaser, and that every person so vending or selling contrary to such prohibition as last aforesaid shall forfeit for every offence the sum of fifty pounds, to be recovered and applied as herein-after mentioned.

But nothing herein shall prohibit any person from selling acts of parliament, forms of prayer, proclamations, gazettes, licensed almanacs, or other printed papers licensed by authority, or any fish, fruits, or vegetables, nor to hinder any person who is the real worker or maker of any goods or wares, or his children, apprentices, servants, or agents, residing with such worker or maker, from carrying abroad, exposing to sale, or selling any of the said goods and wares of his own making, at any public fair, market, or elsewhere, nor any tinker, cooper, glazier, plumber, harness mender, or other person usually trading in mending kettles, tubs, household goods, or harness, from going about and carrying with him proper materials for mending the same." 29 Geo. 3. c. 26. § 21.—50 Geo. 3. c. 41. § 23.

and the sum of, of lawful money of Great Britain, to be distributed as the law directs according to the form of the statute in such case made and provided. Given under my hand and seal the

*Description of an offence according to the foregoing statute ;
Conviction to be varied according to the subject matter.*

"That E. F. of , in the said county of , on the day of , was a hawker and pedlar, and a petty chapman, and a trading person going and travelling from town to town, and to other men's houses, within that part of the United Kingdom called England ; carrying to sell, without any licence so to do, divers goods, wares, and merchandizes, that is to say, certain woollen cloths,* of which the said E. F. was not the real worker or maker, or the child, apprentice, agent, or servant to the real worker or maker thereof ; and the said E. F. being a hawker, pedlar, and petty chapman, and travelling from town to town, and other men's houses, with-

* " Provided, that no person being a wholesale trader in *English* bone lace, or in *woollen*, linen, silk, cotton, or mixed goods, or any goods, wares, or manufactures of *Great Britain*, and selling the same by *wholesale*, shall be deemed a hawker, pedlar, or petty chapman ; but that such persons, and those that shall be immediately employed under them to sell by wholesale only, may go from house to house to any customer who sells again, without being subject to any penalty." 29 Geo. 3. c. 26. § 20.

(And by 52 Geo. 3. c. 108. this exemption from the duties is extended to persons carrying about coals in carts, or on horses, mules, or asses, and selling *the same by retail*.)

The appeal from the convictions of justices is given in the following words:—

" Provided always, that if any person shall think himself aggrieved by the judgment of such justice, he may, on entering into recognizance with two sureties to the amount of the penalty and costs which may be awarded, conditioned to pay the same in case such judgment be affirmed, appeal to the next general sessions for the county or place, who may summon, examine witnesses on oath, and finally hear and determine the same ; or at their discretion may state the facts specially for the determination of the King's Bench thereon. And if the judgment of such justice be affirmed, such justices, or court of King's Bench, may award such costs occasioned by such appeal as to them shall seem meet." 29 Geo. 3. c. 26. § 25. and 50 Geo. 3. c. 41. § 27.

in that part of the United Kingdom called England as aforesaid, carrying to sell such goods, wares, and merchandizes as aforesaid, on the day of, in the year of our Lord aforesaid, at aforesaid, in the county aforesaid, exposed to sale and offered to sell, and did then and there actually sell by retail, and not by wholesale, a parcel, to wit, five yards and a half of narrow woollen cloth, he the said E. F. not being the real worker or maker of the said cloth, nor being the child, apprentice, servant, or agent of the worker or maker thereof, nor then being a person trading wholesale in the woollen or linen manufactures of this kingdom, and selling the same by wholesale, nor immediately employed under any such person or persons to sell by wholesale only, nor being then in any public mart, market, or fair, and that he the said E. F. was then and there found trading as aforesaid, without any licence so to do, contrary to the statute in that case made and provided."

CONVICTIONS—(Highways).

Conviction of a toll-keeper on a turnpike for demanding and taking toll of a traveller, who was exempt by a ticket certifying his having paid at another gate.

Middesex } Be it remembered that on the day of
(to wit.) } in the year of our Lord 18 , at
in the parish of, in the county aforesaid, J. A. came before me T. N. esq. one of his Majesty's justices of the peace for the said county, and informed me that on the 3d day of March instant, George Davies did pass with a cart drawn by two horses through a certain turnpike-gate erected and set up by authority of parliament, in a certain lane leading from Kingsland Road to Haggerstone, in the parish of St. Leonard, Shoreditch, in the county aforesaid, the same being a place duly appointed for the collection of tolls by virtue of the statute in that case made and provided, and then and there paid to the collector and receiver of the said tolls, then and there authorized and placed to receive the same, the sum of four-pence half-penny as and for the toll for passing through of the said cart and horses as aforesaid; and did receive of and from the said collector and receiver a note and ticket denoting the payment of the said toll for the said cart and horses as

aforesaid, and that one Joseph Dawkins afterwards, to wit, on the day and year last aforesaid, did with the said cart drawn by the said two horses as aforesaid, pass through a certain other turnpike-gate, erected and set up by the like authority of parliament in Kingsland Road, in the parish of St. Leonard, Shoreditch, aforesaid, in the county aforesaid, (the said last-mentioned turnpike-gate being also a place duly appointed for the collection of tolls,) and did then and there show and produce to Nathaniel Coulson of the parish aforesaid, in the county aforesaid, yeoman, the collector and receiver of tolls there, to wit, at the said last-mentioned turnpike-gate, the said note and ticket so by the said George Davis received as aforesaid, for the payment of the said toll for the said cart drawn by two horses aforesaid, through the said first-mentioned turnpike-gate, on production of which said note or ticket, denoting the payment of such toll on that day, he the said J. D. was under and by virtue of the statute in that case made and provided intituled to pass without paying any further or additional toll; Yet the said N. C. so being such collector and receiver as aforesaid, well knowing the premises, and not regarding the statutes in that case made and provided, did on the day and year last aforesaid, at the turnpike-gate in Kingsland Road aforesaid, in the parish and county aforesaid, unlawfully demand and take of and from the said Joseph Dawkins greater toll for the passing of the said cart, drawn by two horses as aforesaid, through the said last-mentioned turnpike-gate, than by the statute in that case made and provided he was authorized to take, by then and there taking of and from the said Joseph Dawkins the sum of fourpence half-penny, over and above the payment of the like sum by the said George Davis to the collector and receiver of the tolls at the said turnpike-gate set up as aforesaid, in the said lane, leading from Kingsland Road to Huggertone, in the parish aforesaid, in the county aforesaid, in manner aforesaid, contrary to the statute made in the thirteenth year of the reign of King George the Third, "For regulating the Turnpike Roads," &c. Whereupon the said N. C., after being duly summoned to answer the said charge,

appeared before me on the seventh day of March instant aforesaid, in the said county, and having heard the charge contained in the said information, declared that he was not guilty of the said offence, but the same being fully proved upon the oath of the said George Davis and Joseph Dawkins, credible witnesses, it manifestly appears to me the said justice that he the said Nathaniel Coulson is guilty of the offence charged upon him in the said information. It is therefore considered and adjudged by me the said justice that the said Nathaniel Coulson be convicted, and I do hereby convict him of the offence aforesaid, and I do hereby declare and adjudge, that he the said Nathaniel Coulson hath forfeited the sum of forty shillings of lawful money of Great Britain for this offence aforesaid, to be distributed as the law directs, according to the form of the statute in that case made and provided. Given under my hand and seal, &c., the said seventh day of March, in the year of our Lord, 18...

Conviction of a surveyor of highways, for not delivering over his books of account to the churchwardens and overseers, on 13 Geo. 3. c. 71.*

County of..... } Be it remembered, that on the 27th
(*to wit.*) } day of December, in the year of our Lord 1813, at R. in the county of....., J. S. came before me W. H. one of his Majesty's justices of the peace of the said county, and informed me that W. B. of the hamlet or division of B. in the township of C. in the said county, labourer,

* "The surveyor shall diligently collect the several assessments, forfeitures, penalties, sums of money, and compositions within the year for which he is appointed surveyor.

And shall keep a book, in which he shall enter a just and true account of all such money as shall have come to his hands, &c. &c.

And shall produce the book and the assessments made in that year to the inhabitants at a vestry, or other public meeting to be held for that purpose, within 15 days before the special sessions to be holden in the week next after *Michaelmas* quarter sessions; to the intent that the said accounts, assessments, and lists may be inspected by the said inhabitants.

And after the said books and assessments shall have been produced at such meeting, he shall take the same to a justice on such day and at such hour as shall be agreed upon at such meeting before such last-mentioned special sessions; and then and there verify such account, or any part thereof, upon oath, if required.

And such justice may allow such account, if he find it just, or post-

was surveyor of highways within the said hamlet, for the year ending at Michaelmas last past; and that afterwards, to wit, on the 25th day of November now last past, at O. in the county aforesaid, a certain book of accounts of the said

pone it until such special sessions, if he find cause for so doing, in which case it may be settled and allowed at such special sessions, after the parts objected to by such justice shall have been explained and verified by proper evidence, to the satisfaction of the justices at such special sessions; and in case any articles contained in such accounts shall not be explained and proved to the satisfaction of such justices, *they may disallow the same.*

When the said accounts shall have been so settled and allowed, or disallowed as aforesaid, *the said book and assessments shall be transmitted to a churchwarden, or overseer of the poor, of such parish, township, or place, or if the place be extraparochial, then to some principal inhabitant thereof, to be kept for the use of such parish, township, or place.* And the said surveyor shall also forthwith deliver a duplicate of such book and account, together with all sums of money that shall remain in his hands, and likewise all tools, materials, implements, and other things as aforesaid, to the succeeding surveyor, if any shall be appointed; or retain the same in his hands, and account for them in his next account, if he shall be continued surveyor in the succeeding year.

And if such surveyor shall neglect to provide such book, or to enter such accounts and lists therein, or to deliver the said book and such duplicate thereof, and such assessments, tools, materials, implements, and other things, in the manner aforesaid, he shall forfeit not exceeding 5*l.* nor less than 40*s.* And if he shall make default in paying or accounting for the money remaining in his hands, within the time, and according to the directions aforesaid, he shall forfeit double the money which shall be adjudged by the said justices to be in his hands.

If the surveyor shall die before such accounts and lists be made out, or such money, book, assessments, tools, materials, and implements, shall be so delivered and paid, his executors or administrators shall make out, pay, and deliver the same, in like manner, and under the like penalty as the surveyor was liable and subject to." § 48.

"If any person shall think himself aggrieved by any thing done by any justice or other person in the execution of this act, and for which no particular method of relief is herein otherwise appointed, he may appeal to the general quarter sessions, giving notice in writing of his intention to bring such appeal, and of the matter thereof to the justice, or other person against whom the complaint shall be made, within six days after the cause of such complaint shall arise; and within four days after such notice entering into recognizance before a justice, with one sufficient surety, conditioned to try such appeal at, and abide the order

W. B. as such surveyor, and certain assessments for repairs of the said highways, were settled and allowed by the Reverend J. H. clerk, and J. W. esquire, two of his Majesty's justices of the peace in and for the said county, pursuant to the statute in such case made and provided; and that afterwards, to wit, from thenceforth to the time of exhibiting the said information and complaint, there were a churchwarden and overseers of the poor duly appointed in and for the township of C. aforesaid, including the said hamlet or division, and that the said W. B., during all the time last aforesaid, neglected to transmit and deliver to such churchwarden and overseers, or any or either of them, the said book and

of, and pay such costs, as shall be awarded by the justices at such quarter sessions." § 80.

(Under this clause it has been holden that no appeal lies against the allowance of the surveyor's accounts. The 80th section only gives an appeal in cases where there is no other remedy. But in this case relief is provided by the 48th section. The books of accounts, after having been examined by the inhabitants at a vestry, are to be taken to one justice, who may allow such accounts if he please; but if he has any difficulty, he may refer them to the petty sessions, where they are to be examined and allowed; "and when the said accounts shall be so settled and allowed;" that is, either by the single justice, or by the petty sessions, they are to be kept for the use of the parish. This mode of allowing the accounts was prescribed for the purpose of preventing any appeal to the quarter sessions. It is immaterial whether the accounts are first taken to one magistrate, and afterwards to the petty sessions: or whether they are taken at once to the petty sessions. In neither case does an appeal lie to the quarter sessions. *R. v. the justices of the West Riding of Yorkshire*, 5 T. R. 629; and *R. v. W. Mitchell*, Id. 701.)

The justices at such sessions, on proof of such notice given, and of the entering into such recognizance, shall hear and finally determine such appeal in a summary way, and award such costs to the party appealing or appealed against, as they shall think proper. § 80.

Provided that no appeal shall be made against any conviction, for a penalty or forfeiture, unless the person convicted shall at the time of such conviction, if he be then present, if not within six days after, give notice of his intention to appeal, and at the same time enter into recognizance with sufficient sureties to pay such penalty or forfeiture, in case the conviction be affirmed upon the appeal; and on his giving such security, the further proceeding for such penalty or forfeiture shall be suspended until the appeal be heard and determined. Ib.

CONVICTIONS—(LORD'S DAY).
 always within the said hundred, in the
 year last past; and that afterwards
 in the year now last past, as C. is
 book of accounts of the said
 for so doing is what
 and verified
 to be true

settled and allowed as aforesaid, contrary to
 statute in such case made and provided.
 and W. B. after being duly summoned to
 re, appeared before me on the
 in the said county, and having
 in the said information, declared
 said offence; but the same
 h of J. S. and R. B. two
 years to me the said
 vility of the offence
 It is therefore
 Justice, that the
 by convict him of
 y declare and adjudge,
 cited the sum of 5*l.* of law-
 , for the offence aforesaid, to be
 directs, according to the form of the
 made and provided. Given under my
 the day and year last aforesaid.

the party do not appear upon the summons, then, after
 words, "being duly summoned to answer the said
 charge," insert ("did not appear before me, pursuant to
 the said summons"); or, if he appeared and refused to
 make defence (did neglect and refuse to make any defence
 against the said charge); or if he confess the charge (did
 acknowledge and voluntarily confess the same to be true).

CONVICTIONS—(Lord's Day).

Middlesex } Be it remembered that on the 11th day of Conviction for
 (to wit.) } April, in the 52d year of the reign of our So- exercising the
 vereign Lord George the Third, of the United Kingdom of business of a
 Great Britain and Ireland, King, Defender of the Faith, at grocer on the
 the parish of St. L., in the said county of M., C. E. of Castle Lord's day, on
 Street, in the parish of St. L., in the county aforesaid, 29 Car. 2. c. 7.
 peruke maker, in his proper person cometh before Sir W.
 P., knight, one of his Majesty's justices assigned to keep
 the peace of our said Sovereign Lord the King, in and for

the county aforesaid; and also to hear and determine divers felonies, trespasses, and other misdeeds done and committed within the said county, and now here exhibiteth before me the said justice, a certain complaint and information, and herein complaineth and giveth me to understand and be informed that J. B. of the parish of St. L., in the county aforesaid, grocer, *being of the age of fourteen years and upwards*, on the 5th day of April, in the year aforesaid (being the Lord's day), at the parish last aforesaid, in the county aforesaid, did exercise his worldly labour, business, and work of ordinary calling (of a grocer),* the same not being a work of necessity or charity, against the form of the statute † in such

* This conviction was perused and settled by a gentleman eminent at the bar, and now on the bench, who inserted these words in parentheses, observing, that he conceived it "necessary to appear on the face of the conviction *what was the nature of the calling*, in the exercise of which the transgression had occurred." Probably because the exercise of some callings on the Lord's day have been specially exempted by the words, others by the interpretation of statutes, from the penalties of the law. See *R. v. Cox*, 1 Burr. R. 785.—*R. v. Younger*, 5 T. R. 449.

† The words of the statute, so far as they apply to the present conviction, are as follow. "No tradesman, artificer, workman, labourer, or other person, shall do or exercise *any worldly labour, business, or work of their ordinary calling* on the Lord's day; (*except works of necessity and charity*; and except dressing meat in families, and dressing and selling of meat in inns or cooks' shops, or victualling houses, for such as cannot otherwise be provided; and by the 9 Ann. c. 23. § 20, except licensed hackney coachmen and chairmen within the bills of mortality;) on pain of every offender *above 14 years of age* forfeiting 5s.; and also that no person shall publicly cry, shew forth, or expose to sale, any wares, merchandizes, fruit, herbs, goods or chattels, whatsoever on the Lord's day, (except crying and selling of milk, before nine in the morning and after four in the afternoon; and except mackarel, which may be sold on *Sundays*, before or after divine service, by the 10 & 11 W. c. 24. § 14.) on pain of forfeiting the same; and also that no person shall use, employ, or travel on the Lord's day, with any boat, wherry, lighter, or barge (*unless allowed by a justice of peace, on extraordinary occasions*;) on pain of 5s.; and if any person offending in any of the premises shall thereof be convicted, in ten days after the offence, before one justice on view or confession, or oath of one witness, the justice shall give warrant to the constables or churchwardens to seize the goods cried, shewed forth, or put to sale, and to sell the same; and to levy the

case made and provided. Whereby the said J. B. forfeited the sum of 5s. of lawful money of Great Britain, to be applied as the said statute directs.—All which the said C. is ready to prove before me the said justice by credible witness or witnesses when the said J. B. shall be summoned to make his defence touching the same. Wherefore the said C. E. prays judgment of me the said justice in the premises. And that I will proceed thereupon according to law, and that the said J. B. may be summoned to appear before me to answer the premises and make defence thereto. And afterwards, to wit, on the 31st day of April, in the 52d year aforesaid, at the parish of St. L. aforesaid, in the county of Middlesex aforesaid, the said J. B. having been previously summoned in due form to answer the matter of complaint contained in the said information; appears in his proper person before me the said Sir W. P., knight, being such justice as aforesaid; and also before me T. G., esq. being also one of his Majesty's justices appointed to keep the peace of our said Lord the King, in and for the said county of Middlesex, and also to hear and determine divers felonies, trespasses and other misdeeds, done and committed within the said county, to answer the matter of complaint contained in the said information, and having heard the same, the said J. B. is asked by us the said justices if he can say any thing for himself why he should not be convicted of the premises above charged upon him in form aforesaid, who pleadeth that he is not guilty of the offence. Whereupon we the said Sir W. P. and J. G. so being such justices as aforesaid, do now proceed to examine into the matter of the said complaint contained in the said information, in the presence and hearing of the said J. B. And thereupon on the same day and year last mentioned, at the parish of St. L. aforesaid, in the county aforesaid, G. M. of the parish of St. L. aforesaid, in the county afore-

other forfeitures by distress; *to the use of the poor*, except that the justice may out of the same *reward the informer* with any sum not exceeding *one third part*. And for want of distress, the offender shall be set publicly in the stocks for two hours."

said, auctioneer, a credible witness in this behalf, cometh in his proper person before us so being such justices as aforesaid, and doth before us the said justices take his corporal oath upon the Holy Gospel of God to speak the truth, the whole truth, and nothing but the truth, of and upon the matters contained in the said information, we having administered, and having a competent power to administer such oath to him the said G. M. in that behalf. And the said G. M. being so sworn, doth on his said oath say and depose before us the said justices, in the presence and hearing of the said J. B., that on Sunday morning, the 5th day of April instant, he was passing the door of the said J. B., a grocer, in Golden Lane, in the parish of St. L., in the county aforesaid, where he saw the said J. B. behind the counter of his the said J. B.'s shop, serving an article wrapped up in paper, to a girl to this informant unknown, and saw him the said J. B. immediately afterwards take certain money of copper off the said counter. That the said J. B. is above fourteen years of age, and that the said J. B. came out of the door of his said shop, and hallooed out "beware of the informers." And the said J. B. doth not produce any evidence to contradict the evidence and proof aforesaid; whereupon it manifestly appears to us the said justices that the said J. B. is guilty of the premises charged upon him by the said information. It is therefore considered and adjudged by us the said justices that the said J. B. be convicted, and he is accordingly convicted of the offence charged upon him in and by the said information. And we do hereby adjudge the sum of 5s. of lawful money of Great Britain to be distributed and divided according to the form of the statute in such case made and provided, that is to say, two third parts thereof to be employed and converted to the use of the poor of the parish of St. L., in the county of Middlesex aforesaid, where the said offence was committed, and one third part thereof to the said C. E. who gave information of the said offence. In witness whereof we the said Sir W. P. and J. G. esq. the justices aforesaid to this Conviction, have set our hands and seals, at the parish of St. L. aforesaid, in the county aforesaid, the said

CONVICTIONS—(*Manufactures*).

* Of this Conviction Mr. Paley observes that the evidence is too technically, and not sufficiently, fully, and correctly set out. 7 T. R. 158, and 8 T. R. 222.

There are several statutes on this particular subject, viz. 10 Wm. 3. c. 2. 8 Ann. c. 6. 4 Geo. 1. c. 7, and lastly this of 7 Geo. 1. c. 22, by which last-mentioned statute, it is enacted, that "no person shall *use* or *wear* on any clothes (velvet excepted) any such buttons, or button-holes; on pain of forty shillings a dozen, on conviction, by confession, or oath of one witness; and any justice of the peace where the offence shall be committed, or the offender shall inhabit, shall on complaint or information on oath of any credible person, in one month after the offence, summon the party, and on his appearance or contempt, examine the matter, and on due proof, by confession, or oath of one witness, convict the offender, and cause the forfeiture by his warrant to be levied by distress and sale; the said penalties to be half *to him on whose oath* the party shall be convicted, and half to the poor of the parish where the offence shall be committed, and persons aggrieved may appeal to the next quarter sessions, giving eight days' notice."

to wit, on the 4th day of March, in the year aforesaid, at Sheffield aforesaid, in the said parish of Sheffield, and in the Riding aforesaid, wear on a certain garment, commonly called a spencer, not made of velvet, one dozen of buttons *made of cloth*,* whereof wearing garments then and there were and are usually made, against the form of the statute in that case made and provided, whereby, and by force of the same statute, the said Francis Parker hath forfeited the sum of forty shillings, of lawful money of Great Britain; and thereupon the said John Grainger prays judgment in the premises, and that the said Francis Parker may be convicted of the said offence, according to the form of the statute in such case made and provided, and that he may be summoned to answer the premises, and to make defence therein before me the said justice: And afterwards, to wit, on the 16th day of March aforesaid, at a certain place called the Cutler's-Hall, in Sheffield aforesaid, in the Riding aforesaid, being the time and place appointed by the summons on the above information, the said Francis Parker being summoned, appeareth, and is present before me the said justice, in order to answer and make good his defence to the said information and offence charged on him as aforesaid; and the said Francis Parker having heard the same, is asked by me the said justice if he can say any thing for himself, why he should not be convicted of the premises above charged upon him as aforesaid, who pleadeth that he is not guilty of the said offence: Nevertheless, on the said 16th day of March aforesaid, in the year aforesaid, at the said place called the Cutler's-Hall, in Sheffield aforesaid, in the Riding aforesaid, one credible witness, to wit, the said Enqch Allott, of Sheffield aforesaid, in the Riding aforesaid, button-maker, cometh before me the said justice, and before me the said justice upon his oath, by me the said justice

* Such are the words of the statute: The design of it being obviously to protect and encourage what is denominated the "button manufacture," it has uniformly been holden that true and genuine buttons *covered with cloth* are not within this prohibition. But with respect to *wooden* moulds so carved, see the anterior statute of 10 W. 3. c. 2.

then and there in the presence of the said Francis Parker duly administered, deposeth, sweareth, and saith, in the presence of him the said Francis Parker, that on the said 14th day of March, in the year aforesaid, at Sheffield aforesaid, in the said parish of Sheffield, and in the Riding aforesaid, the said Francis Parker did wear on a certain garment, commonly called a spencer, not made of velvet, one dozen of buttons made of cloth (whereof wearing garments were and are usually made): And thereupon the said Francis Parker having heard and fully understood all and singular the matters and things in the said information and evidence contained, he the said Francis Parker is by me the said justice asked what he hath to say or offer in his defence against the said information and offence, and in answer to the evidence given as aforesaid, and what he hath to say why he should not be convicted of the premises charged upon him as aforesaid; and forasmuch as the said Francis Parker doth not shew or alledge any sufficient cause, or produce or offer any evidence in answer to the said information, evidence, matters, or things charged upon him as aforesaid, it manifestly appears to me the said justice, that he said Francis Parker is guilty of the offence above charged upon him in and by the said information: It is therefore, on the day and year last aforesaid, and at the place aforesaid, adjudged by me the said justice of the offence charged upon him in and by the said information, according to the form of the statute in such case made and provided: And I award and adjudge that the said Francis Parker, for his offence aforesaid, hath forfeited the sum of forty shillings, to be distributed as the statute aforesaid * doth direct. In witness whereof I the said justice to this present record of Conviction have set my hand and seal, at Sheffield aforesaid, on the Riding aforesaid, the day of March, in the year of our Lord 1802.

* That is, one moiety to the person *on whose oath the defendant is convicted*, and one moiety to the poor of the parish where the offence was committed. This is an instance, therefore, in which a person interested in the penalty may be a witness, contrary to the general rule.

appeared before me on the seventh day of March instant aforesaid, in the said county, and having heard the charge contained in the said information, declared that he was not guilty of the said offence, but the same being fully proved upon the oath of the said George Davis and Joseph Davkins, credible witnesses, it manifestly appears to me the said justice that he the said Nathaniel Coulson is guilty of the offence charged upon him in the said information. It is therefore considered and adjudged by me the said justice that the said Nathaniel Coulson be convicted, and I do hereby convict him of the offence aforesaid, and I do hereby declare and adjudge, that he the said Nathaniel Coulson hath forfeited the sum of forty shillings of lawful money of Great Britain for this offence aforesaid, to be distributed as the law directs, according to the form of the statute in that case made and provided. Given under my hand and seal, &c., the said seventh day of March, in the year of our Lord, 18...

Conviction of
a surveyor of
highways, for
not delivering
over his books
of account to
the church-
wardens and
overseers, on
13 Geo. 3. c.
71. *

County of } Be it remembered, that on the 27th
(*to wit.*) } day of December, in the year of our Lord
1813, at R. in the county of, J. S. came before me
W. H. one of his Majesty's justices of the peace of the said
county, and informed me that W. B. of the hamlet or divi-
sion of B. in the township of C. in the said county, labourer,

* "The surveyor shall diligently collect the several assessments, forfeitures, penalties, sums of money, and compositions within the year for which he is appointed surveyor.

And shall keep a book, in which he shall enter a just and true account of all such money as shall have come to his hands, &c. &c.

And shall produce the book and the assessments made in that year to the inhabitants at a vestry, or other public meeting to be held for that purpose, within 15 days before the special sessions to be holden in the week next after *Michaelmas* quarter sessions; to the intent that the said accounts, assessments, and lists may be inspected by the said inhabitants.

And after the said books and assessments shall have been produced at such meeting, he shall take the same to a justice on such day and at such hour as shall be agreed upon at such meeting before such last-mentioned special sessions; and then and there verify such account, or any part thereof, upon oath, if required.

And such justice may allow such account, if he find it just, or post-

was surveyor of highways within the said hamlet, for the year ending at Michaelmas last past; and that afterwards, to wit, on the 25th day of November now last past, at O. in the county aforesaid, a certain book of accounts of the said

pone it until such special sessions, if he find cause for so doing, in which case it may be settled and allowed at such special sessions, after the parts objected to by such justice shall have been explained and verified by proper evidence, to the satisfaction of the justices at such special sessions; and in case any articles contained in such accounts shall not be explained and proved to the satisfaction of such justices, *they may disallow the same.*

When the said accounts shall have been so settled and allowed, or disallowed as aforesaid, *the said book and assessments shall be transmitted to a churchwarden, or overseer of the poor,* of such parish, township, or place, or if the place be extraparochial, then to some principal inhabitant thereof, to be kept for the use of such parish, township, or place. And the said surveyor shall also forthwith deliver a duplicate of such book and account, together with all sums of money that shall remain in his hands, and likewise all tools, materials, implements, and other things as aforesaid, to the succeeding surveyor, if any shall be appointed; or retain the same in his hands, and account for them in his next account, if he shall be continued surveyor in the succeeding year.

And if such surveyor shall neglect to provide such book, or to enter such accounts and lists therein, or to deliver the said book and such duplicate thereof, and such assessments, tools, materials, implements, and other things, in the manner aforesaid, he shall forfeit not exceeding 5*l.* nor less than 40*s.* And if he shall make default in paying or accounting for the money remaining in his hands, within the time, and according to the directions aforesaid, he shall forfeit double the money which shall be adjudged by the said justices to be in his hands.

If the surveyor shall die before such accounts and lists be made out, or such money, book, assessments, tools, materials, and implements, shall be so delivered and paid, his executors or administrators shall make out, pay, and deliver the same, in like manner, and under the like penalty as the surveyor was liable and subject to." § 48.

"If any person shall think himself aggrieved by any thing done by any justice or other person in the execution of this act, and for which no particular method of relief is herein otherwise appointed, he may appeal to the general quarter sessions, giving notice in writing of his intention to bring such appeal, and of the matter thereof to the justice, or other person against whom the complaint shall be made, within six days after the cause of such complaint shall arise; and within four days after such notice entering into recognizance before a justice, with one sufficient surety, conditioned to try such appeal at, and abide the order

contract, agreement, and combination, we the justices aforesaid do adjudge to be contrary to the statute made in the thirty-ninth and fortieth years of the reign of his present Majesty, intituled, "An act to repeal an act passed in the last sessions of parliament, intituled, 'An act to prevent unlawful combinations of workmen,' and to substitute other provisions in lieu thereof;" and we the said justices do hereby further order and adjudge the said A. B., C. D., and E. F., for the said offence, to be committed to and confined in the common gaol for the said county [*or riding, division, city, liberty, town, or place*] for the space of or to be committed to the house of correction at within the said county [*or riding, division, city, liberty, town, or place*], there to be kept to hard labour for the space of*

Given under our hands, the year and day above written.
(or)

* And no journeyman, workman, or other person, shall enter into any such contract, covenant, or agreement in writing or not in writing; and every journeyman and workman, or other person, who shall be guilty of any of the said offences, being thereof convicted upon his own confession, or the oath of one witness, before two justices, within three calendar months, shall, by order of such justices, be committed to the common gaol for not exceeding three calendar months; or at the discretion of such justices shall be committed to some house of correction, there to remain and be kept to hard labour for not exceeding two calendar months. § 2.

And every journeyman or workman, or other person, who shall enter into any combination to obtain an advance of wages, or to lessen or alter the hours of the time of working, or to decrease the quantity of work, or for any other purpose contrary to this act, or who shall, by giving money, or by persuasion, solicitation, or intimidation, or any other means, wilfully endeavour to prevent any unhired journeyman, or workman, or other person, in any manufacture, trade, or business, or any other person wanting employment in such manufacture, trade, or business, from hiring himself to any manufacturer, or tradesman, or person conducting any manufacture, trade, or business, or who shall, for the purpose of obtaining an advance of wages, or for any other purpose contrary to this act, wilfully decoy, persuade, solicit, intimidate, influence, or prevail, or attempt to prevail, on any journeyman, or workman, or other person, to quit or leave his work, service, or employment, or who shall wilfully hinder any manufacturer or tradesman, or other person, from employing in his manufacture, trade, or business, such journeymen, workmen, and other persons as he shall think proper, or who, being hired, shall, without

And we the said justices do hereby adjudge and determine the said A. B., C. D., and E. F., severally and respectively to forfeit and lose the respective sums of of lawful money of Great Britain, to be distributed as the said act directs.*

Given under, &c. _____

CONVICTIONS—(*Naval Stores*).

County of } Be it remembered, that on the 21st day of September, in the year of our Lord 1804, Lazarus Abrahams, of the parish of St. Paul, Deptford, in the county of Kent, labourer, was charged and convicted before me J. H. esquire, one of his Majesty's justices of the peace for the said county, &c. the said justice

Conviction for having naval stores in possession without certificate, by 39 & 40 Geo. 3. c. 89.†

any just cause, refuse to work with any other journeyman or workman employed therein, and who shall be convicted of any of the said offences, upon his own confession, or the oath of one witness before two justices, within three calendar months, shall be committed to the common gaol, for not exceeding three calendar months; or otherwise be committed to some house of correction, there to remain and be kept to hard labour for not exceeding two calendar months. § 3.

* No person (whether a journeyman or workman, or not) shall at any time wilfully pay any sum as a subscription for the purpose of paying expenses incurred or to be incurred by any person acting contrary to this act, [or] by payment of money or other means, support any journeyman, workman, or other person, or contribute towards his support, for the purpose of inducing him to refuse to work, or to be hired; and every person who shall be guilty of any such offence, shall forfeit not exceeding ten pounds, and every journeyman, workman, and other person who shall collect any money or valuable thing for any of the purposes aforesaid, shall forfeit not exceeding five pounds, such penalties of ten pounds, and five pounds to be forfeited, one moiety to his majesty, and the other to the informer and poor of the parish, to be equally divided between them. § 5.

† The general form of conviction is prescribed by 39 & 40 Geo. 3. c. 89, § 22; but the offence of having naval stores unlawfully in possession is provided against by numerous statutes, which must be respectively consulted for the different species of offences to be inserted in the descriptive portion of the Conviction.

They are 9 & 10 Wm. 3. c. 41.—1 Geo. 1. c. 25.—9 Geo. 1. c. 8.—17 Geo. 2. c. 40.—39 & 40 Geo. 3. c. 89.—54 Geo. 3. c. 60.—55 Geo. 3. c. 127, and 56 Geo. 3. c. 80.

having before proceeding to hear and determine the said charge against the said Lazarus Abrahams, in this behalf obtained the consent in writing, of H. D. esquire, Sir J. H. knight, and C. M. esquire, three of the principal officers and commissioners of his Majesty's navy, to hear and determine the same in a summary way, pursuant to the statute in such case made and provided, for that he the said Lazarus Abrahams not being a contractor with his Majesty's principal and commission of the navy ordnance or victuallers for his Majesty's use, or employed by any such contractor to make any stores of war or naval stores whatsoever, on the 18th day of September, now last past, at the parish of St. Paul, Deptford, aforesaid, in the said county of Kent, unlawfully had in the custody, possession and keeping of him the said Lazarus Abrahams, certain naval stores marked with the mark usually used to and marked upon such like naval stores of his Majesty, that is to say, two pieces of copper balls, each of the said pieces being marked with a broad arrow, the said naval stores not exceeding the value of twenty shillings, but being of less value, to wit, of the value of eleven shillings, contrary to the statute in such case made and provided, &c. And I the said justice do adjudge that the said Lazarus Abrahams, for his said offence, be imprisoned and kept to hard labour for the space of three calendar months, in the house of correction at Deptford, and for the said county of Kent. Given under my hand and seal, this 21st day of November, in the year of our Lord 1814.

CONVICTIONS—(Pawnbrowsers).

Conviction of *Middlesex*, } Be it remembered, That on this day
 a pawnbroker (to wit.) } of in the year of his Majesty's
 for taking more than legal }
 interest, by }
 39 & 40 Geo. 3. }
 c. 99. * } his Majesty's justices of the peace for the said county of

* This Conviction is for an offence described by the 5th section of the statute. The form of Conviction is prescribed by the 34th section, but, like most statutable forms, leaves all the most essential part, viz. the description of the specific offence, to be supplied by the court.

Middlesex, for that, on the . . . day of . . . in the year of our Lord . . . , at the parish of . . . in the said county of Middlesex, he the said B. T. who then and there used and exercised the trade and business of a pawnbroker, did unlawfully demand, receive, and take of and from one R. O. on redeeming the pawn and pledge hereinafter mentioned, the sum of one penny of lawful money of Great Britain, as for and by way of profit upon the sum of one shilling and sixpence, of like lawful money, the said sum of one shilling and sixpence being a sum not exceeding the sum of two shillings and sixpence; theretofore, to wit, on the . . . day of . . . in the year of our Lord . . . , at and in the parish aforesaid, in the county aforesaid, lent and advanced by the said B. T. upon a certain pawn and pledge, that is to say, one cotton gown, to the said R. O. which said pawn and pledge was redeemed by the said R. O. within

ing magistrate. The offences noticed by the statute are too numerous to be separately and individually considered in the compass of a note; but it is necessary to observe, that some of the grievances pointed out by it are to be remedied by an *order*, (see section 14), some to be punished by *conviction*; that most of the offences are cognizable by *one* justice, but that some of the proceedings are directed to be before *two* (see section 20); lastly, that it is provided by section 26, as follows, viz.

“That in case any pawnbroker shall offend against this act in neglecting to make, in a fair and regular manner, in such book as aforesaid, any such entry as is hereby required, (viz. by section 20), he shall forfeit for each offence not exceeding ten pounds, as to such justice shall seem reasonable and fit; and for *every other* offence, *where no other* penalty is imposed, not more than ten pounds, nor less than forty shillings; the same respectively to be levied by distress and sale, half to the person complaining, and half to the poor, if not herein otherwise disposed of and applied.” § 26.

An appeal is given to the *next* session, by section 35, on condition of the person convicted entering into recognizance, *at the time* of conviction, with two sureties in double the sum he is adjudged to pay, with condition to prosecute, abide the judgment, and pay costs. And *certiorari* taken away by section 34. This brief view of the statute is sufficient as an illustration of the conviction here exhibited; but for more detailed observations on it, bearing upon orders, convictions, and appeals from it, see *ante*, p. 655, 6, 7.

the space of seven days after the expiration of the first calendar month after the same had been so pawned and pledged as aforesaid, that is to say, on the said day of in the year aforesaid, to wit, at and in the parish aforesaid, in the county aforesaid, the said sum of one penny, so demanded, received, and taken as aforesaid, being more than at and after the rate of one halfpenny for the loan of any sum not exceeding two shillings and sixpence by the calendar month, and being greater profit than he the said B. T. was then and there entitled, and ought to demand, receive, and take, contrary to the form of the statute in such case made and provided; and I the said justice do adjudge him to pay and forfeit, &c.

Given, &c.

CONVICTIONS—(*Receiver of stolen Lead*).

Erroneous
Conviction of
a receiver of
stolen lead,
not giving a
satisfactory
account how
he obtained it,
by 29 Geo. 2.
c. 30.*

Middlesex, } Be it remembered, that on the day of
(*to wit.*) } in the year of the reign of our
sovereign Lord George the Third, by the grace of God, of
the United Kingdom of Great Britain and Ireland, King,
defender of the Faith, and in the year of our Lord
at in the parish of in the said county of Middlesex, T. J. was convicted before us, T. N. and J. M. esquires, two of his Majesty's Justices of the peace for the said county of Middlesex, of a misdemeanor, in having in his possession in his dwelling-house, on the day of

* This conviction was appealed from to the Middlesex Midsommer sessions, 1805, on two grounds; 1st. because it was on paper, not on parchment; 2dly, because certain allegations were omitted, hereafter to be noticed. Respecting the first ground, the 7th section directs, that the conviction shall be certified by two, or more, justices, to the next general or quarter sessions, &c. and that such convictions *shall be drawn on parchment*, and certified in the following words, or to the like effect, &c. This conviction being on paper admitted of no doubt, and it was quashed accordingly; but it was holden by the court, and conceded by the Bar in general, that, except in a *very few instances*, wherein statutes had expressed that the "conviction should be certified on parchment, or on paper," that *all records* of courts should be on parchment; and consistently with this determination has been the general practice.

..... instant, in the parish of St. Mary, Whitechapel, in the said county of Middlesex, sixty pounds' weight of lead, three pounds' weight of solder, one pound weight of brass, and twenty-four pounds' weight of iron, suspected to be stolen or unlawfully come by, and *not producing the party or parties of whom he bought or received the same, nor giving a satisfactory account how he came by the same,** contrary to the statute in such case made and provided, and we the said justices did adjudge, and do adjudge the said T. J. to pay and forfeit for his said offence, the sum of six pounds, the same being his third offence, to go and be applied as the statutes in such cases direct. Given under our hands and seals the day and year aforesaid, &c.

CONVICTIONS—(*Watchmakers*).

County of Middlesex, } Be it remembered, that on the Erroneous
(to wit.) } day of, in the Conviction of
year of his Majesty's reign, J. C. was convicted before me, a journeyman
J. N. esquire, one of his Majesty's justices of the peace for watchmaker
the said county of Middlesex, of purloining and embezzling part of the
on the 23d day of March, instant, at the parish of St. Geo. 2. c. 7.†

* The form of Conviction in this case is given by the statute, and immediately after these few words in *italics*, it proceeds, "or of neglecting to apprehend and secure the person who brought, and offered to sell, pawn, or deliver the lead, &c. suspected to be stolen, &c." Now in this case these words were omitted in the conviction, and it appeared in evidence that the defendant did (on his suspicion being excited) take some steps, (equivocal ones indeed) to have the person who brought the articles apprehended. These however being the facts of the case, the convicting magistrates ought, it was contended, to have negatived this particular part in the words of the statute; for though the acts which he had done might be doubtful in their nature, and though the magistrates were without any doubt the judges of the weight of the evidence in his defence, yet if they did not give credit to it, they ought not to have passed it over entirely without any notice, but ought to have negatived the effect of it in the words of the statutable conviction, by stating that the defendant, among other instances of making no, or an inadequate, defence, had omitted to shew that he had not "neglected to apprehend the seller." The court were favourable to both objections, and the conviction was quashed.

† The statute, under which this conviction took place, has prescribed a form of conviction, inserted in it as follows, which is here introduced ver-

Luke, in the said county of Middlesex, part of the inside work of a certain watch, the property of J. S. and S. S. of

batim, because the objections taken to the precedent under review, arose out of a doubt, whether a necessity for more precision of expression were not to be collected by *direct reference*, than appears on the face of the statutable conviction itself.

“If any person, employed by any person practising the trade of clock-making, or watch-making, or any branch of such trade, to make, finish, alter, repair, or clean any clock or watch, or any part of a clock or watch, or intrusted by any person practising the said trade with any gold, silver or other metal or material, to be, or that shall be, in the whole, or in part, wrought for any part of a clock or watch, or any precious stone to be set in or about any clock or watch, shall purloin, embezzle, sell, pawn, exchange, or otherwise unlawfully dispose of any such goods, and be convicted by the oath of the owner, or any other witness, or by confession before any justice, every such offender shall for the first offence forfeit twenty pounds, and in case the forfeiture be not forthwith paid, the justice shall commit the party convicted to the house of correction, or other public prison, to be kept to hard labour for fourteen days, unless such forfeiture be sooner paid; and if within two days before the expiration of the fourteen days such forfeiture be not paid, the said justice is empowered to order the person convicted to be publicly whipped; and for a subsequent offence the person again offending shall forfeit forty pounds, which if not forthwith paid, the justice shall commit the person again offending to the house of correction or other public prison, to be kept to hard labour, for not exceeding three months, nor less than one, unless the forfeiture be sooner paid; and if within seven days before the expiration of the time for which such offender is committed the forfeiture be not paid, the justice is empowered to order the person again offending, to be publicly whipped twice, or oftener.” § 1.

“And if any person shall buy, receive or take by way of gift, pawn, or exchange, or in any other manner, any clock or watch, or any part of a clock or watch, or any gold, silver, or other metal or material as aforesaid, wrought or not wrought, or any precious stone intrusted with any person hired or employed as aforesaid, knowing the same to be so purloined and embezzled, being convicted in manner before prescribed, he shall for the first offence forfeit twenty pounds; and in case the forfeiture be not forthwith paid, the justice, before whom such conviction is had, shall commit the party so convicted to the house of correction or other public prison, to be kept to hard labour for fourteen days, unless the forfeiture shall be sooner paid, and if within two days before the expiration of the said fourteen days the said forfeiture shall not be paid the justice shall order him to be publicly whipped as aforesaid once or oftener, as to such justice shall appear reasonable; and for a second, of

the parish of St. Mary, Whitechapel, in the said county, master watch-makers, practising the trade of watch-makers,

other subsequent offence, he shall forfeit forty pounds, and if not forthwith paid, the justice shall commit him as aforesaid, to be kept to hard labour for any time not exceeding three months, nor less than one month, unless the forfeiture shall be sooner paid; and if within seven days before the expiration of the time for which he shall be committed the forfeiture shall not be paid, the justice shall order him to be publicly whipped as aforesaid twice or oftener, as to him shall appear reasonable.

"If any person shall think himself aggrieved by the judgment of the justice, he may appeal to the next sessions; in which case the execution of the judgment shall be suspended, the person so convicted entering into a recognizance at the time of the conviction, with two sureties in double the sum adjudged to prosecute the appeal with effect, and to be forthcoming to abide the judgment and determination of the justices in such sessions; and the justices there shall hear and determine the same, and award such costs to either party as to them shall appear just and reasonable; and if the judgment shall be affirmed, the appellant shall immediately pay the sum adjudged, together with such costs as shall by the court be awarded; or in default thereof shall suffer the penalties as for purloining, embezzling, or receiving as aforesaid."

The Conviction shall be in the form following :

Middlesex } BE it remembered, That on the day of in the
(*to wit.*) } year of his Majesty's reign, A. B. was convicted before
me [*or us*] of his majesty's justices of the peace for the said county
of, or for the riding or division of the said county of or
for the city, liberty, or town of in the said county of [*as the
case shall be*] of purloining, embezzling, secreting, selling, pawning,
exchanging, or unlawfully disposing of, or of buying, receiving, or
taking to pawn [*as the case shall happen to be*] — [*specifying the
respective goods, materials, or effects*] the property of C. D. of
in the county of Given under my hand and seal [*or, our hands
and seals*], the day and year aforesaid.

The objection taken to this conviction was on the words stating the offence to be that of having "embezzled part of the inside work of a watch, &c." The prescribed form directs the *specifying the respective goods, materials, or effects*; and this direction, according to grammatical construction, extends to *embezzling* and *purloining*, as well as to *receiving*, *buying*, and *taking in pawn*, (though perhaps designed only to apply to the latter); and therefore the words "*part of the inside work of a watch,*" do not satisfy the direction contained in the prescribed form

he the said J. C. being a journeyman watch-maker, and being employed by the said J. S. and S. S. to alter the said inside work of the said watch, contrary to the statute in that case made and provided, for which said offence I the said justice do adjudge him the said J. C. to forfeit twenty pounds, this being his first offence. And the said J. C. having refused and neglected to pay the said penalty and sum of twenty pounds, I do further adjudge that he the said J. C. be committed to the house of correction, in Cold Bath Fields, in the said county, to hard labour for the space of fourteen days, unless the said forfeiture shall be sooner paid; and if within the space of two days before the expiration of the said fourteen days, the said forfeit shall not be paid, I do order that the said J. C. be for his said offence once publicly whipped between the hours of twelve and one o'clock at noon, from the corner of Mutton-lane, Ray-street, in the parish of St. James, Clerkenwell, in the said county, over Clerkenwell Green, and to the further end of Aylesbury-street, in the said last mentioned parish. Given under my hand and seal, &c. in the parish of St. L. in the said county of Middlesex, the day and year first above written.

CONVICTIONS—(*Vagrants*).

Conviction of
an idle and dis-
orderly person
under 17 Geo. 2.
c. 5.

County of..... } Be it remembered, that on the....
(to wit.) } day of in the year of the
reign of our Sovereign Lord George the Third, of the
united kingdom, &c. and in the year of our Lord
at in the said county of bringeth before me
..... one of the justices of our said Lord the King,
assigned to keep the peace of our said Lord the King in
and for the said county, and also to hear and determine
divers felonies, trespasses, and other misdemeanors in the
said county committed, the body of D. O., and giveth me

of conviction, inasmuch as no *particular works*, no *particular parts of the inside* by name, can be said to be specified.

The question was discussed much at length at a Middlesex session, in the 42d year of Geo. 3, and the conviction ultimately quashed.

the justice to understand and be informed, that on the day of in the year aforesaid, at in the parish of in the county aforesaid, the said D. O. did go about from door to door, and did place himself in streets, highways, and passages, to beg and gather alms in the said parish, *in which said parish the said D. O. then dwelt,** contrary to the form of the statute in such case made and provided. And thereupon he the said A. B. prayeth of me the said justice, that he the said D. O. be dealt with according to law for his said offence. Whereupon the said D. O. is asked by me the said justice, if he can say any thing for himself why he the said D. O. should not be convicted of the said offence above charged upon him in form aforesaid; who pleadeth that he is not guilty thereof. Whereupon I do now proceed to examine into the truth of the complaint so brought by the said A. B. against the said D. O., and hereupon, on the day and year first aforesaid, at aforesaid, in the county aforesaid, he the said A. B. being a credible witness, upon his corporal oath, upon the Holy Evangelists of God, now administered to him by me the said justice, in the presence and hearing of the said D. O., deposeth and saith, that on the day of aforesaid, in the year aforesaid, in the county aforesaid, he the said A. B. saw the said D. O. go about from door to door, and place himself in streets, highways, and passages, to beg and gather alms in the said parish, and that he heard the said D. O. beg alms of many persons in such streets, highways, and passages; and that the said D. O. then dwelt in the said parish, and the said D. O. doth not produce before me any evidence to gainsay the same. Therefore it manifestly appeareth to me the said justice, that the said D. O. is guilty of the offence above charged upon him, in manner and form as in and by the said complaint is alledged, and is thereby an idle and disorderly person, within the intent and meaning of the said statute. It is therefore adjudged by me the said justice, that the said

* The fact described by these words, constitutes the difference between an "idle and disorderly person," and a "rogue and vagabond."

D. O. be convicted of the said offence, and he is hereby by me accordingly convicted of the offence charged upon him, in and by the said complaint, according to the form of the statute in such case made and provided. And I do adjudge that the said D. O., for his said offence, be committed, and the said D. O. is by me committed to the house of correction at..... in and for the said county, there to be kept to hard labour for one month, according to the statute in that case made and provided. In testimony whereof I the said to this record of conviction have put my hand and seal, so being such justice aforesaid, at..... aforesaid, in the county aforesaid, the said day of..... in the said year of our Sovereign Lord King George the Third, &c. and in the year of our Lord.....

Conviction of
a rogue and
vagabond
under the 17 of
Geo. 2. c. 5.

County of..... } Be it remembered, that on the....
(*to wit.*) } day of..... in the..... year of the
reign of our Sovereign Lord King George the Third, of
the united kingdom, &c. and in the year of our Lord.....
at in the said county of..... bringeth before me
..... one of the justices of our said Lord the King,
assigned to keep the peace of our said Lord the King in
and for the said county, and also to hear and determine
divers felonies, trespasses, and other misdemeanors in the
said county committed, the body of one D. O., and giveth
me the said justice to understand and be informed, that on
the day of in the year aforesaid, at
aforesaid, in the parish of..... in the said county, he the
said A. B. apprehended the said D. O. then and there
wandering abroad and begging alms, under pretence of loss
by fire, contrary to the form of the statute in such case
made and provided. And thereupon the said A. B. prayeth
of me the said justice, that the said D. O. may be dealt
with according to law for his said offence. Whereupon
the said D. O. is asked by me the said justice, if he can say
any thing for himself, why he the said D. O. should not be
convicted of the offence above charged upon him, in the
form aforesaid, who pleadeth that he is not guilty thereof.
Whereupon I do now proceed to examine into the truth of

the complaint so brought by the said A. B. against the said D. O. And thereupon, on the day and year first aforesaid, at the parish of aforesaid, in the county aforesaid, the said A. B. being a credible witness, on his corporal oath, upon the Holy Evangelists of God, now administered to him by me the said justice, in the presence and hearing of the said D. O., depose and saith, that on the day of in the year aforesaid, at aforesaid, in the parish aforesaid, in the county aforesaid, he the said A. B. saw the said D. O. wandering abroad and begging, or gathering alms under pretence of loss by fire, and that the said A. B. heard the said D. O. beg alms of several persons, saying that he had suffered such loss by fire, whereas no such fire had taken place. And the said D. O. doth not produce before me any evidence to gainsay the same. Therefore it manifestly appears to me the said justice, that the said D. O. is guilty of the offence above charged upon him, in manner and form as in and by the said complaint alledged; and is thereby a rogue and vagabond, within the true intent and meaning of the said statute. It is therefore adjudged by me the said justice, that the said D. O. be convicted of the said offence, and he is hereby by me accordingly convicted of the said offence, so charged upon him in and by the said complaint, according to the form of the statute in that case made and provided. And I do order the said D. O. to be sent, and the said D. O. is by me accordingly committed to the house of correction at in and for the said county, there to remain until the next quarter sessions of the peace, to be held in and for the said county, and have you him then there, together with this precept,* *unless he be sooner discharged by due course of law, according to the form of the statute in such case made and provided.* † In testimony whereof, I the said justice to this record of conviction have put my hand and seal, at

* If the party is committed for a less time than until the next sessions, add, "there to remain for the space of weeks, being a less time than until the next general quarter sessions of the peace, to be holden in and for the said county."

† See *ante*, p. 519. for the reason of this insertion.

aforesaid, in the county aforesaid, the said day of in the said year of the reign of our Sovereign Lord King George the Third, and in the year of our Lord

Conviction as a
rogue and va-
gabond for
playing at an
unlawful game,
by 11 Geo. 2.
c. 5. } *Middlesex to wit.* } Be it remembered, that on the day of in the year, &c. and in the year of our Lord at in the parish of in the county of Middlesex, one G. R. is apprehended and brought before me J. M., Esq. one of his Majesty's justices, assigned to keep the peace of our said Lord the King, in and for the said county of Middlesex, and also to hear and determine divers felonies, trespasses, and other misdemeanors done and committed within the said county, by J. B., one of the constables of the said county of Middlesex, and the said G. R. being so brought and present before me the justice aforesaid, David J., of Blue Town, Sheerness, in the parish of Minster, in the county of Kent, slopseller, Aaron M., of the same place, slopseller, and Daniel N., of the same place, slopseller, gave me the said justice to understand and be informed, that he the said G. R., mariner, * did, on the day of in the year aforesaid, at the parish of Christchurch, in the county of Middlesex aforesaid, unlawfully play at a certain unlawful game for money, to wit, *shaking dice in the hat*, † whereby the said G. R. was and is a rogue and vagabond, within the true intent and meaning of the statutes in that case made and provided, and pray that the said G. R. may be dealt with accordingly. Whereupon the said G. R. is asked by me the said justice, if he can say any thing for himself why he the said G. R. should not be convicted of the premises above charged upon him, in form aforesaid.

* Mariners are among the description of persons, in the 33 Hen. 8 forbidden to play at certain games.

† The 13 Geo. 2. c. 19. § 11. declares all games to be unlawful within the meaning of 12 Geo. 2. c. 28. which are played with a die or dice, and the statute on which this conviction is founded, declares that all persons playing, or betting, at any unlawful games, or plays, shall be deemed rogues and vagabonds. See *ante*, p. 513.

ho pleadeth that he is not guilty of the said offence; and whereupon, on the said 22d day of December, in the year foresaid, at aforesaid, in the parish of Saint L. foresaid, in the county of Middlesex aforesaid, three credible witnesses, to wit, the said David J., Aaron M., and D. N., being present before me the said justice aforesaid, upon their respective oaths, to them then and there severally by me the said justice aforesaid duly administered, the said David J. deposeth, sweareth, and on his oath aforesaid affirmeth and saith, in the presence and hearing of the said G. R., that, &c. (*here set forth his evidence and cross-examination.*) The said Aaron M. deposeth, sweareth, and on his oath aforesaid affirmeth and saith, in the presence and hearing of the said G. R., that, &c. (*the evidence.*) And the said David N. deposeth, sweareth, and on his oath aforesaid affirmeth and saith, in the presence and hearing of the said G. R., that (*state his evidence.*) Whereupon all and singular the premises being considered, and nature deliberation being thereupon had, it manifestly appears to me the said justice, that the said G. R. is guilty of the offence aforesaid, and thereupon the said G. R. is by and before me the said justice, convicted of the offence aforesaid, and I do adjudge the said G. R. to be a rogue and vagabond, within the true intent and meaning of the statute aforesaid; and thereupon it is considered by me the said justice, that he the said G. R. be committed, and he is by me committed to the house of correction in Cold-Bath-Fields, Clerkenwell, aforesaid, there to remain until the next general quarter sessions of the peace, to be holden in and for the said county of Middlesex, then and there to be further dealt with according to law, unless he be sooner discharged by due course of law. In testimony whereof I the said J. M., the justice aforesaid, at in the parish of Saint L. aforesaid, in the county of Middlesex aforesaid, the said day of December, in the year aforesaid, unto this record set my hand and seal.

Middlesex to wit. } Be it remembered, that on the Conviction as a
 } day of November, in the year, rogue and va-
 } gabond for

pretending to
tell fortunes,
by the same.

&c. and in the year of our Lord at in the parish of Saint L., in the county of Middlesex, one Isabella S. is apprehended and brought before me Sir William P., knight, one of his Majesty's justices assigned to keep the peace of our said Lord the King in and for the said county of Middlesex, and also to hear and determine divers felonies, trespasses, and other misdemeanors committed within the said county, by Daniel B., of the parish of Saint L. in the said county of Middlesex, being one of the constables of the said parish, and the said Isabella S., being so brought and present before me the justice aforesaid, Mary, the wife of Robert B., of-street, in the parish of Saint Matthew, Bethnal-Green, in the said county of Middlesex, brickmaker, gave me the said justice to understand and be informed, that the said Isabella S., on the day of November, in the year aforesaid, at the parish of Saint L. in the said county of Middlesex, did unlawfully pretend to tell the fortune of the said Mary B., whereby the said Isabella S., was and is a rogue and vagabond, within the true intent and meaning of the statute in that case made and provided, and prays that the said Isabella S. may be dealt with accordingly. Whereupon the said Isabella S. is asked by me the said justice, if she can say any thing for herself why she the said Isabella S. should not be convicted of the premises above charged upon her, in form aforesaid who pleadeth that she is not guilty of the said offence. Nevertheless, on the said day of November, in the year aforesaid, at aforesaid, in the parish of Saint L. aforesaid, in the county of Middlesex aforesaid, three credible witnesses, to wit, the said Mary B., Esther, the wife of William R., of-street, in the parish of Saint Matthew, Bethnal-Green, in the county aforesaid, brickmaker, and the said Daniel B., being present before me the justice aforesaid, upon their oaths, on the Holy Gospel of God, to them then and there severally by me the justice aforesaid administered; the said Mary B. deposeth, sweareth, and on her oath aforesaid affirmeth and saith, in the presence and hearing of the said Isabella S. that she the said Mary B. having been informed, that the

convictions—(VAGRANTS).
 justice aforesaid, Elizabeth, the wife of John
 in the parish of Saint L., in the said
 sawyer, gave me the said justice to
 ned, that he the said Thomas Stiff,
 in the year aforesaid, at the
 Southwark, in the county of
 county to the said county of
 d to tell the fortunes of the
 hereby the said Thomas
 and, within the true in-
 hat case made and
 nas Stiff may be
 d Thomas Stiff
 any thing for
 onvicted of
 foresaid,
 said offence.
 May, in the year
 ad parish of Saint L.,
 said, being an adjoining
 Surrey, four credible witnesses,
 C., John A., John V., of the
 foresaid, and Daniel B., of the said
 parish and county, yeoman, being present
 justice aforesaid, upon their oaths, on the
 pel, to them then and there severally by me the
 aforesaid administered; the said Elizabeth C. de-
 seeth, sweareth, and on her oath aforesaid affirmeth and
 saith, in the presence and hearing of the said T. S., that on
 Monday, the day of May instant, between the hours
 of five and six in the evening, she the said Elizabeth C.
 went to a house, No. 9, in the Mall, near Saint George's- Parish.
 square, Saint George's Fields, Surrey; that she the said
 Elizabeth C. was let in by a woman who showed her the
 said E. C. into a back room, where he the said Thomas
 Stiff was sitting: she the said Elizabeth C. asked the said
 T. S. whether he could do any thing for her in his way on
 that day? The said Thomas Stiff hesitated a little, and
 then asked the said Elizabeth C. whether she could tell

said D. B. importuned the said Isabella to admit him into her house, he the said D. B. wrenched the shutter open, and the said Joshua A. got in and opened the door. They searched the said Isabella S.'s house, and found four packs of dirty cards, and an old book, entitled, "The Art of Telling Fortunes," which cards, and which book, the said D. B. now produces before me the justice aforesaid. Whereupon all and singular the premises being considered, and mature deliberation being thereupon had, it manifestly appears to me the said justice, that the said Isabella S. is guilty of the offence aforesaid, and thereupon the said Isabella S. is by and before me the said justice, convicted of the offence aforesaid. And I do adjudge the said Isabella S. to be a rogue and vagabond, within the true intent and meaning of the statute aforesaid. And thereupon it is considered by me the said justice, that she the said Isabella S. be committed and she is by me committed to the house of correction, at Cold-Bath-Fields, in the county of Middlesex, there to remain until the next general sessions of the peace, to be holden in and for the said county of Middlesex, or until discharged by due course of law. In testimony whereof the said Sir William P., the justice aforesaid, at in the parish of Saint L. aforesaid, in the county of Middlesex aforesaid, the day of November, in the year aforesaid, unto this record do set my hand and seal.

Another for a similar offence committed in one county, and convicted before a justice of a contiguous county.

Middlesex and Surrey } Be it remembered, that on the
(to wit.) } day of May, in the
year, &c. and in the year of our Lord at the parish
of in the county of Middlesex, one Thomas Stiff is
apprehended and brought before me John G., esquire, one
of his Majesty's justices, assigned to keep the peace of our
said Lord the King in and for the said counties of Middlesex and Surrey, the said counties being adjoining counties, and also to hear and determine divers felonies, trespasses, and other misdemeanors committed within the said counties, by John A., of the parish of St. L., in the said county of Middlesex, being one of the constables of, &c. And the said Thomas Stiff being so brought and present

before me the justice aforesaid, Elizabeth, the wife of John J., of-street, in the parish of Saint L., in the said county of Middlesex, sawyer, gave me the said justice to understand and be informed, that he the said Thomas Stiff, on the day of May, in the year aforesaid, at the parish of Saint George, Southwark, in the county of Surrey, being an adjoining county to the said county of Middlesex, did unlawfully pretend to tell the fortunes of the said Elizabeth C. and John C., whereby the said Thomas Stiff was and is a rogue and vagabond, within the true intent and meaning of the statute in that case made and provided, and prays that the said Thomas Stiff may be dealt with accordingly. Whereupon the said Thomas Stiff is asked by me the said justice, if he can say any thing for himself why he the said T. S. should not be convicted of the premises above charged upon him, in form aforesaid, who pleadeth that he is not guilty of the said offence. Nevertheless, on the said 26th day of May, in the year aforesaid, at aforesaid, in the said parish of Saint L., in the county of Middlesex aforesaid, being an adjoining county to the said county of Surrey, four credible witnesses, to wit, the said Elizabeth C., John A., John V., of the parish of Saint L., aforesaid, and Daniel B., of the said last mentioned parish and county, yeoman, being present before me the justice aforesaid, upon their oaths, on the Holy Gospel, to them then and there severally by me the justice aforesaid administered; the said Elizabeth C. deposeth, sweareth, and on her oath aforesaid affirmeth and saith, in the presence and hearing of the said T. S., that on Monday, the day of May instant, between the hours of five and six in the evening, she the said Elizabeth C. went to a house, No. 9, in the Mall, near Saint George's-Parish square, Saint George's Fields, Surrey; that she the said Elizabeth C. was let in by a woman who showed her the said E. C. into a back room, where he the said Thomas Stiff was sitting: she the said Elizabeth C. asked the said T. S. whether he could do any thing for her in *his way* on that day? The said Thomas Stiff hesitated a little, and then asked the said Elizabeth C. whether she could tell

him the said T. S. the month, day, and hour, in which the said Elizabeth C. was born? The said Elizabeth C. told him as near as she could. The said Thomas Stiff then desired the said Elizabeth C. to follow him up stairs, which she did. The said T. S. then asked her the said E. C. again the hour of her birth? which she told him. The said T. S. then told the said Elizabeth C. to sit down, and the said Thomas Stiff sat down himself opposite to a writing-desk: he then looked out a book, which the said Elizabeth C. took for an Almanack. The said Thomas Stiff asked the said Elizabeth C., if she had not a mole on her breast. The said Elizabeth C. said, she believed she had. The said Thomas Stiff then asked the said Elizabeth C. to look at it, and to see whether it was black, white, or red. The said Thomas Stiff then asked her if she had not a mole on her back? She the said Elizabeth C. said, yes, between her shoulders. The said Thomas Stiff looked at it, and told the said Elizabeth C. it was very fortunate for her that it was red; for, had it been black, she would have been very unfortunate. Before this, the said Elizabeth C. showed him this mole, he told her he knew where it was. The said Elizabeth C. then told him, that she had another mole on her left side: the said Thomas Stiff asked her what colour it was? The said Elizabeth C. said it was red. The said Thomas Stiff said, it was very fortunate it was red. The said Thomas Stiff asked the said Elizabeth C. if she had not a mole upon one knee? The said Elizabeth C. said she did not know; if she had, it was more than she knew. The said Thomas Stiff then looked into some books, one of which was like a dictionary, and, when it was opened, it seemed as if there were the figures of planets in it. The said Thomas Stiff hesitated some time, and told her there were five children promised her; that it was very fortunate that one of them had died, because it was very rickety and sickly. The said Thomas Stiff told the said Elizabeth C. that she had been put into business from eleven to thirteen; that the business she then learnt would probably be the means of supporting her through life; that from sixteen to nineteen she

was exposed to many little troubles; from nineteen to twenty-one that she was married; went a journey, and had a child. While the said Thomas Stiff was telling her this, he had a brass plate before him, and a pencil in his hand, and a book into which he occasionally looked. The said Thomas Stiff described her husband to have a mole upon his right cheek, a knitting in his brows, that he was a good man, and was very much beloved, that he must take particular care of horses, particularly in crossing the road, for he would *probably* be hurt by horses. The said Thomas Stiff told the said Elizabeth C. that in the 37th year of her age she would be *likely* to be more wealthy than she had been. The said Elizabeth C. asked the said Thomas Stiff whether she had better continue in the midwifery business, or stick to her needle work. He told her not on any account to begin any kind of business till the latter end of July, or the beginning of August next. But that after that time it was *probable* every thing would prosper. The said Elizabeth C. told the said Thomas Stiff that she had a great inclination to put into the lottery, but he told her not to do it until August, for till that time the planets were unfavourable. The said Thomas Stiff also told her that she had been pretty nearly reduced to want, but that she should never actually be in want, for that he could put her the said Elizabeth C. in the way of recovering all she had lost. He the said Thomas Stiff advised her to beware of 43 years of age, as the said Thomas Stiff told the said Elizabeth C. she might *probably* have a violent fit of sickness then, but still not to despair, for she was born under a fortunate planet, and was always very fortunate. The said Thomas Stiff said, that two marriages had been promised her, but that it would take a very long time to discover whether they would take place, and when. The said Elizabeth C. seeing it was late, told the said Thomas Stiff to make it as short as possible. He the said Thomas Stiff said he would only then tell her the heads of it, but that if he were to do it as it ought to be done, it would take him three days, and then it would cost a guinea. Sir, said the said Elizabeth C. to the said Thomas Stiff, don't men-

tion that, for I have only got a trifle of money about me, make it as low as you can. He the said Thomas Stiff then took a piece of paper and made several marks on it with a pencil, and with other instruments which he had about the brass plate. And the said Thomas Stiff told the said Elizabeth C. a great deal about journies and sickness, the particulars of which she cannot recollect. The said Elizabeth C. asked the said Thomas Stiff again what it would come to? The said Thomas Stiff then said not quite to half a guinea. The said Elizabeth C. then got up and begged the said Thomas Stiff to make it as low as he could. The said Thomas Stiff then demanded eighteen pence, which the said Elizabeth C. paid him, he the said Thomas Stiff telling the said Elizabeth C. to call again in August, and he would do something more for her the said Elizabeth C. than he the said Thomas Stiff could then do. The said Thomas Stiff told the said Elizabeth C. that the common price which he charged was half-a-crown. The said Elizabeth C. went away, but returned and asked the said Thomas Stiff for his direction, that the said Elizabeth C. might call again. He the said Thomas Stiff then asked his wife to take a card out of a table drawer, which she did, and gave one to the said Elizabeth C., and which is the same as is now produced. The said John A. deposeth, sweareth, and on his oath aforesaid affirmeth and saith, in the presence and hearing of the said Thomas Stiff, that he the said John A. in consequence of having received a warrant for that purpose, went on the . . . day of May instant, with the said Elizabeth C., John R., Daniel B., and John V., to very near the sign of the Stags public house, near the Mall at Lambeth, where they stopped the coach. They then went in, and sent the said Elizabeth C. to see whether the said Thomas Stiff was at home, and if he the said Thomas Stiff was at home, the said Elizabeth C. was to stay. The said John A. and the other officers who accompanied him, followed after about ten minutes had elapsed and knocked at the door of the said Thomas Stiff, which was opened by a woman, who said she was Thomas Stiff's wife, which woman ran to the stairs and endeavoured to prevent the

said John A. and the others accompanying him from going up, and called out to the said Thomas Stiff, who came forward, when the said John A. served the warrant on the said Thomas Stiff. The said John A. took the said Thomas Stiff into the room on the first floor, where the said John A. laid hold of two books on a table therein; the books contain a great variety of pictures, figures, and devices, representing the sun, moon, and divers stars, similar to books which the said John A. has before seen at other Fortune Tellers. The said John A. saw several ladies waiting in another room. The said John V. deposeth, sweareth, and on his oath aforesaid affirmeth and saith in the presence and hearing of the said Thomas Stiff, that he the said John V. went with the said John A., Daniel B., and Elizabeth C. to the house of the said Thomas Stiff at the time and place mentioned by the said John A., and the said John V. confirms the whole of the testimony of the said John A., and further saith, that he the said John V. opened the door of a back parlour, where there were two smart young ladies, a decent looking woman, and other women, apparently waiting for some person, as they seemed to be without employment, and in bonnets and cloaks. The said Daniel B. deposeth, sweareth, and on his oath aforesaid affirmeth, and saith in the presence and hearing of the said Thomas Stiff, that he went with the other deponents to the house of Thomas Stiff, at the time and place mentioned by them, and confirms their testimony now before me the justice aforesaid, given as aforesaid. Whereupon all and singular the premises being considered, and mature deliberation being thereupon had, it manifestly appears to me the said justice that the said Thomas Stiff is guilty of the offence aforesaid, and thereupon the said Thomas Stiff is by and before me the said justice convicted of the offence aforesaid, and I do adjudge the said Thomas Stiff to be a rogue and vagabond within the true intent and meaning of the statute aforesaid, and thereupon it is considered by me the said justice, that he the said Thomas Stiff be committed, and he is by me committed to the house of correction in Horsemonger Lane, in the county of Surrey, there to remain

until the next general quarter sessions of the peace, to be holden in and for the county of Surrey, or until discharged by due course of law. In testimony whereof I the said John G. the justice aforesaid, at the parish of St. L. aforesaid, in the county of Middlesex aforesaid, the day of, in the year aforesaid, unto this record do set my hand and seal.*

* This conviction was appealed from; for (though a commitment in execution, and therefore not bailable, 2 T. R. 190,) it was made on the very eve of a session, and therefore the appeal, if successful, would prevent all but a very few days' imprisonment. The appeal was supported on two grounds. First, that the conviction declares no "telling of fortunes," because, according to the evidence, no future events are prognosticated, but only past occurrences reviewed, and cautions given with respect to futurity. Secondly, that the only part of the evidence which bears upon any offence like *conjuración*, or *crafty science*, is provided against by statute after a different manner; which shews that the statute which subjects fortune tellers to convictions *as vagrants* was only directed against *gipsies*, and other such *wandering impostors*, not against offenders of the description of the appellant. Those statutes are 9 Geo. 2, c. 5, by which it is enacted, "that no prosecution, suit, or proceeding, shall be commenced or carried on against any person, for witchcraft, sorcery, inchantment, or *conjuración*, or for charging another with any such offence." § 3.

"But if any person shall pretend to exercise or use any kind of witchcraft, sorcery, inchantment, or *conjuración*, or undertake to tell fortunes, or pretend from his skill or knowledge in any occult or *crafty science* to discover where or in what manner any goods or chattels, supposed to have been *stolen or lost*, may be found; such offender being thereof convicted, on indictment or conviction, shall suffer imprisonment by the space of one whole year, without bail or mainprize, and once in every quarter of the said year, in some market-town of the proper county, upon the market day, there stand openly on the pillory by the space of one hour; and also shall (if the court think fit) give sureties for his good behaviour, in such sum and for such time as the court shall judge proper, according to the circumstances of the offence; and in such case, shall be further imprisoned until such sureties be given." § 4.

By 4 Geo. 1, c. 11, it is also enacted, That if any person taketh money or reward, under pretence of helping any person to stolen goods, he shall (unless he apprehends the felon and prosecutes) be guilty of felony, and suffer according to the nature of the principal offence.

The conviction was confirmed. See Nos. 9 and 10, among the descriptions of persons subject to the punishments of the vagrant act of 17 Geo. 2, c. 5. *Ante*, p. 512.

Middlesex } Be it remembered, that on the 14th day of June, in the 54th year of the reign of our Sovereign Lord George the Third, by the grace of God, &c., and in the year of our Lord 1814, at the parish of St. L., in the county of Middlesex, one C. C. is apprehended and brought before me Sir. W. P., knight, one of the justices of our Lord the King, assigned to keep the peace of our said Lord the King, in and for the said county of Middlesex, and also to hear and determine divers felonies, trespasses, and other misdemeanors committed within the said county by J. C., being one of the headboroughs of the said parish of St. L., in the said county of Middlesex; and the said C. C. being so brought and present before me the said justice aforesaid, J. S. of the parish of St. L., being one of the overseers of the poor of the said parish, gives me the said justice to understand and be informed, that the said C. C., on the 11th day of February last at the parish last aforesaid, in the county aforesaid, did unlawfully run away and leave A. C. his wife and his five lawful children, namely, Ann, aged twelve years and upwards; Eliza, aged seven years and upwards; George, aged six years and upwards; John, aged four years and upwards; and Abraham, aged two years and upwards; whereby the said A. C., and his said five children, are become chargeable unto the said last-mentioned parish; by reason whereof the said C. C. was and is a rogue and vagabond, within the true intent and meaning of an act of parliament passed in the 17th year of the reign of his late Majesty King George the Second, intituled, "An act to amend and make more effectual the laws relating to rogues, vagabonds, and other idle and disorderly persons, and to houses of correction," and prays that the said C. C. may be dealt with accordingly; whereupon the said C. C. is asked by me the said justice, if he can say any thing for himself, why he the said C. C. should not be convicted of the premises above charged upon him in form aforesaid, who pleadeth that he is not guilty of the said offence; nevertheless on the said 14th day of June, in the 54th year aforesaid, at

Conviction of
a rogue and
vagabond, for
running away
and leaving his
family.

the public office, Worship-street, in the parish of St. Leonard, Shoreditch aforesaid, in the county aforesaid, two credible witnesses, to wit, the said A. C., wife of the said C. C., and J. S., being present before me the said justice aforesaid, upon their oath on the Holy Gospel of God, to them then and there severally by me the justice aforesaid administered, severally depose, swear, and on their oath aforesaid affirm and say, in the presence and hearing of the said C. C., and first the said A. C., on her oath, deposeth, sweareth, and saith, that the said C. C. is her husband, that she has five children, lawful issue of the said C. C., that he has run away and left her, and that she had no support from him, either directly or indirectly for eighteen weeks past, and that she the said A. C. hath been obliged to apply to the parish, from whom she has received 6s. a week for herself and for her said children; and the said J. S. on his oath deposeth, sweareth, and saith, that he is the vestry clerk of the said parish of St. L., that he has relieved the said A. C. and her children, on the part of the parish, and that he has paid her 6s. a week for the last eighteen weeks; whereas all and singular the premises being considered, and mature deliberation being thereupon had, it manifestly appears to me the said justice that the said C. C. is guilty of the offence aforesaid, and thereupon the said C. C. is by and before me the said justice convicted of the offence aforesaid; and I do adjudge the said C. C. to be a rogue and vagabond, within the true intent and meaning of the statute aforesaid, and thereupon it is considered by me the said justice, that he the said C. C. be committed, and he is by me committed to the house of correction, at Cold-Bath-Fields, in the county of Middlesex, there to remain until the next general quarter sessions of the peace, to be holden in and for the said county of Middlesex, or until he shall be discharged by due course of law. In testimony whereof I the said Sir W. P., the justice aforesaid, at the public office, in Worship-street, in the parish of St. Leonard, Shoreditch aforesaid, in the county of Middlesex aforesaid, the

said 14th day of June, in the 54th year aforesaid, unto this record do set my hand and seal.

Middlesex } Be it remembered, that on the 20th day of Conviction of
 (to wit.) } December, in the 56th year of the reign of a rogue and
 our Sovereign Lord George the Third, of the United vagabond for
 Kingdom of Great Britain and Ireland, King, Defen- being found in
 der of the Faith, &c., in the year of our Lord 1815, an inclosed
 at the public office in Worship-street, in the parish of garden belong-
 St. Leonard, Shoreditch, in the county of Middlesex, ing to a house
 one W. G. is apprehended and brought before J. G., with intent to
 esq., one of the justices of our Lord the King, assigned to steal, by
 keep the peace of our said Lord the King, in and for the 23 Geo. 3, c. 88.
 said county of Middlesex, and also to hear and determine
 divers felonies, trespasses, and other misdemeanors com-
 mitted within the said county, by T. H., being one of
 the head beadles of the parish of St. Mary, Islington,
 in the said county of Middlesex, and the said W. G.
 being so brought and present before me the justice afore-
 said, S. P., the elder, of Dalby Terrace, in the parish
 of St. Mary, Islington, in the county aforesaid, S. D.,
 S. P., the younger, of the same place, S. D. and T. I.,
 of Upper-street, in the parish of St. Mary, Islington,
 aforesaid, labourer, gave me the said justice to under-
 stand and be informed, that the said W. G. was, on the
 19th day of December instant, found in an inclosed garden
 belonging to the house of the said S. P., the elder, of Dal-
 by Terrace, in the parish of St. Mary, Islington, aforesaid,
 in the county aforesaid, with intent to steal the goods and
 chattels of the said S. P., the elder; by reason whereof
 the said W. G. was and is a rogue and vagabond within
 the true intent and meaning of two acts of parliament,
 one of which was passed in the seventeenth year of the
 reign of his late Majesty King George the Second, inti-
 tuled, "An act to amend and make more effectual the
 laws relating to rogues, vagabonds, and other idle and
 disorderly persons, and to houses of correction;" and the
 other of which was passed in the twenty-third year of the

reign of his present Majesty King George the Third, intituled, "An act to extend the provisions of an act, intituled, 'An act to amend and make more effectual the laws relating to rogues, vagabonds, and other idle and disorderly persons, and to houses of correction;" whereupon the said W. G. is asked by me the said justice, if he can say any thing for himself, why he the said W. G. should not be convicted of the premises above charged upon him in form aforesaid, who pleadeth that he is not guilty of the said offence; nevertheless, on the said 20th day of December, in the 56th year aforesaid, at the public office Worship-street, in the parish of St. Leonard aforesaid, in the county aforesaid, three credible witnesses, to wit, the said S. P., the elder, S. P., the younger, and T. I. being present before me the justice aforesaid, upon their oath on the Holy Gospel of God, to them then and there severally by me the justice aforesaid administered, severally swear, and on their oath aforesaid affirm and say, in the presence and hearing of the said W. G. and first the said S. P., the elder, on his oath deposeth, sweareth, and saith, that he lives at Dalby House, Dalby Terrace, in the parish of St. Mary, Islington, in the county of Middlesex, and is a linen-draper, that about half past one yesterday morning, the 19th of December instant, his son, the said S. P., the younger, came to his chamber-door, and said there were thieves in the house, and asked the said S. P., the elder, to go down with him; that the said S. P., the elder, threw up the sash and called to the watch to take care that no one escaped from the premises; that several watchmen immediately surrounded the garden, and then the said S. P., the elder, and his said son, went down stairs; that the house was all safe below, but the said S. P., the elder, perceived the marks of a ladder on the gravel below a balcony; and on examination the French windows, which open into that balcony, were opened as if somebody had opened them from the outside; that the said W. G. was apprehended on the premises, and another man ran away up the road on the alarm being given. The

said S. P., the younger, on his oath deposeeth, sweareth, and saith, that he was alarmed yesterday morning, the 19th instant, between one and two, by the barking of a little dog in the house: that the said S. P., the younger, listened, and that he heard some persons attempting to get into the house; that the said S. P., the younger, sleeps on the same floor with the dining-room, and that he heard the noise very distinctly; that the dog continued to bark, and the noise continuing at intervals, the said S. P., the younger, dressed himself, and then took a poker and went to his father's room to alarm him; that the watchmen were called out of the windows, and as they came, they saw that one watchman had seized the said W. G. And the said T. I. on his oath deposeeth, sweareth, and saith, that he is a watchman in the parish of St. Mary, Islington; that at half past one yesterday morning he heard an alarm from Dalby-terrace, City Road; that he repaired to the spot, and got over the front fence and found the said W. G. there; that the moment the said W. G. saw the said T. I. the said W. G. endeavoured to get over the fence, but falling back the said T. I. apprehended him; that the said W. G. said he heard an alarm of thieves, and he got over to the assistance of the gentleman.

Whereupon all and singular the premises being considered, and mature deliberation being thereupon had, it manifestly appears to me the said justice, that the said W. G. is guilty of the offence aforesaid: And thereupon the said W. G. is by and before me the said justice convicted of the offence aforesaid; and I do adjudge the said W. G. to be a rogue and vagabond within the true intent and meaning of the statute aforesaid; and thereupon it is considered by me the said justice, that he the said W. G. be committed, and he is by me committed to the house of correction at Cold-Bath-Fields, in the county of Middlesex, there to remain until the next general quarter sessions of the said county, to be holden in and for the said county of Middlesex, or until he shall be disposed of by due course of law. In testimony whereof, I the said J. G. the justice aforesaid at the public office, Worship-street, in the parish of St.

Leonard, Shoreditch, aforesaid, in the county aforesaid, the said 20th day of December, in the 56th year aforesaid, unto this record do set my hand and seal.

To the Governor of the House of Correction, Cold Bath Fields, or his Deputy.

Commitment of *Middlesex* } Receive into your custody the body of Wil-
an incorrigible } (to wit.) } liam Jacklin, herewith sent to you, brought
rogue, under } before me J. N., esq. one, &c., by W. T. H. constable,
17 Geo. 2. c. 5. and charged and convicted before me the said justice upon
the oaths of ditto, of being an incorrigible rogue * within the
intent and meaning of an act of parliament made and
passed in the 17th year of, &c., intituled, &c., to wit, for
that he the said W. J. having at the general sessions of
the peace, &c., been adjudged by the court there to be a
rogue and vagabond. And thereupon punished according
to the law, and afterwards discharged; he the said W. J.
since that time, to wit, on, &c. was apprehended, &c.

Order of ses- *Middlesex* } At the general session of the peace of our
sion, on which } (to wit.) } Lord the King, holden in and for the county
the above com- } of Middlesex, at the session house for the said county,
mitment as an } (by adjournment on Friday the 12th day of September,
incorrigible } in the 52d year of the reign of our Sovereign Lord
rogue is found- } George the Third, by the grace of God of the United King-
ed. } dom of Great Britain and Ireland, King, Defender of the
Faith. W. J. brought before this Court by the governor
of the house of correction at Clerkenwell, in this county,
standing convicted before John N., esq. one of his Majesty's
justices of the peace for this county, of being a rogue and
vagabond, that is to say, for that he the said W. J. on the
31st day of August last, about the hour of twelve in the
night of the same day, at the parish of Ealing, otherwise
Zealing, in the county aforesaid, in the King's highway
there was apprehended, having upon him at the time of his

* See post, p. 829, note.

apprehension two loaded pistols, with intent feloniously to assault some person or persons there, against the statute, &c., and being now here by the court, upon examination of the circumstances of this case, adjudged a rogue and vagabond, is ordered to be detained and kept in the house of correction to hard labour for the term of six months now next ensuing. By the Court.

See the preceding commitment and order.

Middlesex } Be it remembered, that on the 19th day of Conviction of
 (to wit.) } April, in the 53d year, &c., at, &c., one Wm. an incorrigible
 Jackson is brought before me J. M., esq., one, &c., at, &c., rogue.
 by J. H., who in the presence and hearing of the said W. J. charges and accuses him the said W. J., before me the said justice, of being a rogue and vagabond, within the intent and meaning of the statute, made in the seventeenth year of the reign of his late Majesty King George the Second, intituled an act to amend, (that is to say,) for that he the said W. J., on the 4th day of September, in the 52d year of the reign of our said Lord the King, at the P. O. Bow-street, in the parish of St. Paul, Covent Garden, in the said county of Middlesex, was brought before J. M., esq., there being one of the justices of our said Lord the King, assigned, &c., and was by him the said J. M., so being such justice as aforesaid, duly convicted and adjudged to be a rogue and vagabond within the intent and meaning of the said statute, made in the seventeenth year of the reign of his said late Majesty King George the Second, and was committed by the said J. M., so being such justice as aforesaid, to the house of correction, at, in, and for the said county, there to remain until the then next general sessions of the peace, to be holden in and for the said county, to be further dealt with according to the law, unless he the said W. J. should be sooner discharged, according to the statute in such case made and provided, at which said then next general sessions of the peace, holden in and for the said county, to wit, at the general session of the peace of our said Lord the King, held in and for the said county of Middlesex, at the session-house for the said county, by adjournment, on

the day of, in the 52d year aforesaid, the said court, upon strict examination of the circumstances of the said case of the said W. J. adjudged him to be a rogue and vagabond within the true intent and meaning of the statute in that case made and provided, and did order that the said W. J. be imprisoned in the said house of correction at Clerkenwell, in this county, there to be kept to hard labour for the space of six months then next ensuing: and the said W. J. was thereupon remanded by the said court to the said house of correction for the said term, and was therein detained and kept to hard labour for six months accordingly, and then discharged. And for that the said W. J. after having been so punished as a rogue and vagabond as aforesaid, and discharged as aforesaid, hath again committed an offence against the intent and meaning of the said act passed in the seventeenth year aforesaid, and is now liable to be deemed a rogue and vagabond, and also an incorrigible rogue, within the intent and meaning of the said act, (that is to say,) for that the said W. J., after having been so convicted and adjudged, punished and discharged as aforesaid, he the said W. J., on the day of, in the 53d year aforesaid, at the parish of, in the said county of Middlesex, was apprehended, having upon him *at the time of his apprehension*,* seven picklock keys, &c., with an intent feloniously and burglariously to break and enter into a certain dwelling-house there situate, contrary to the form of the statute in such case made and provided; and thereupon the said J. H. prayeth of me the said justice, that the said W. J. may be dealt with according to the law for his said offence; and he the said W. J. is thereupon asked by me the said justice, if he can say any thing for himself, why he should not be convicted of the premises charged upon him in manner aforesaid; and the said W. J. pleadeth, that he is not guilty thereof; whereupon I the said J. M., the justice aforesaid, do now here, (that is to say,) on this day of, in the 53d year aforesaid, at the public office

* See *ante*, p. 514, in note.

Worship-street aforesaid, in the said parish of St. Leonard, Shoreditch, in the county aforesaid, proceed to examine into the truth of the said charge and accusation so made by the said J. H. as aforesaid; and thereupon on the said day of, in the 53d year aforesaid, at the parish last aforesaid, in the county aforesaid, T. H., J. H., W. F., T. T., D. W. H., and T. A. credible witnesses in that behalf, on their corporal oath, upon the Holy Gospel of God, now here duly administered to them, respectively by me the said J. M. the justice aforesaid, in the presence and hearing of the said W. J., depose and say: and first the said T. H. deposes and says, &c., and the said J. H. says, &c., and the said W. F. says, &c., and the said R. F. says, &c., and the said W. J. having heard the said evidence, and being now asked by me the said J. M., the justice aforesaid, if he can say any thing in his defence, or shew any cause before me, why he should not be convicted of the premises aforesaid, and adjudged to be a rogue and vagabond, *and also an incorrigible rogue*, he the said W. J. doth not offer or say any thing in his defence, or produce any evidence in answer to the said charge; wherefore it manifestly appears to me the said justice, that the said W. J. is guilty of the premises above charged upon him in manner and form aforesaid; and that the said W. J. is a rogue and vagabond, *and also an incorrigible rogue*, within the intent and meaning of the said statute made in the seventeenth year aforesaid, he having been before convicted, adjudged, punished, and discharged as a rogue and vagabond in manner and form aforesaid; whereupon I the said J. M., the justice aforesaid, upon full and mature consideration of the premises, do hereby *convict the said W. J. of the premises aforesaid, above charged upon him in manner and form aforesaid; and he is hereby convicted thereof** accordingly. And I do deem and ad-

* See *ante*, p. 516, as to certain conflicting authorities on justices *out of court* being entitled to convict of this specific offence. The better opinion seems to be that they are *not*, but that this description of vagrants (incorrigible rogues,) are to be committed, and *tried by the*

judge the said W. J. to be, and he is hereby deemed and adjudged to be a rogue and vagabond, and *also an incorrigible rogue*, within the intent and meaning of the said statute: and I do order and adjudge the said W. J. to be committed, and the said W. J. is now, by me the said justice, committed to the house of correction, at Clerkenwell, in and for the said county, there to remain until the next general sessions of the peace, to be holden in and for the said county, to be further dealt with according to the law; *unless he the said W. J. shall be sooner discharged by due course of law.** In testimony thereof I the said J. M. the justice aforesaid, to this record of Conviction, have set my hand and seal, at the public office in Worship-street aforesaid, in the said parish of St. Leonard, Shoreditch, in the said county of Middlesex, this day of, in the 53d year aforesaid, and in the year of our Lord 1803.

sessions on these commitments, the justices in Session acting in such case, as observed by Mr. Justice Aston in another, (see *ante*, p. 645), as jurymen with respect to the *fact*, and as judges with respect to the *decision*.

* Whether the justice out of court have authority to *convict*, or not, these words ought to be omitted in the *commitment* of an *incorrigible rogue*, because *such* an offender is committed to the sessions absolutely, not conditionally. See *ante*, p. 516.

CHAP. VI.

THE TERMINATION OF SESSIONS.

Of the Duration, and Termination, of their Authority ; with some Observations on other Matters connected with, or arising out of, their Duties; not only while the Courts are sitting, but subsequent to their Adjournment, and even to Expiration.

ALL sessions are of course terminated by the departure of the justices, the constituted authorities by whom they are holden, unless they be previously prolonged by adjournment. But such adjournment ought not to be beyond the time of meeting of the next quarterly session.

An indictment was found before the justices for the county of Lincoln against a constable for refusing to obey an order. The defendant was tried, convicted, and had judgment given against him at a *general session* holden the 3d day of May (which was after the Easter session began) by the adjournment of the Epiphany session. The judgment was reversed by the court of B. R. "because the justices cannot continue one general session to a day subsequent to the time appointed by the stat. of Hen. 5, for the holding another original session." *

Cannot be to a day subsequent to the next session by statute.

But though they may not adjourn a matter *over* the next original session, they may, in certain cases, adjourn it *to* then; as where a statute giving *an appeal* to the session within a certain number of months after the cause of complaint shall arise, direct the justices at the *said* session to hear and determine the matters of such appeal, &c.; yet it seems they have an incidental power of adjourning it to another session upon lawful cause;—of the sufficiency of which cause they are the sole judges. But where the session

is adjourned, the style of it must not run "at such session held by adjournment," but the original meeting of the session ought to be set forth, and that it was "continued from thence to such further time by adjournment."*

Judgments
may be altered.

It has been observed in a preceding page, that the whole session being considered as one day, the justices may alter their judgments at any time before its expiration, and may therefore make any order to annul a former order made during its continuance;† but this is a power to be exercised with delicacy and discretion; for if it were to be done by a fresh accession of justices in the spirit of party, or otherwise in an unbecoming manner, it would be visited by the court of B. R. in the shape of an information against the justices who concurred in the transaction.‡

Cannot be
reviewed by
a subsequent
session.

It follows necessarily, from what has been already advanced, that, as the *power* of the court expires with the conclusion of its sitting, if a question be not kept open by adjournment of the session, or respite of the particular subject, it cannot be reviewed, or placed in any new situation, by any subsequent session.§

May be re-
ferred to a
superior au-
thority.

But beside these means, by which the justices may, purely of their own authority, *procrastinate* their decision on all subjects, there are other modes, by means of which any *particular* question of *legal* difficulty may be referred to the opinion of a superior tribunal; or by which the subject matter may be altogether taken out of their hands, at the instance of a party interested.

These are, 1st, By the reference of the whole case, or any particular point, to the judge of assize.

2dly, By stating the special circumstances of a case for the consideration of the Court of King's Bench, and,

3dly, By a writ of *certiorari*. Of these respectively.¶

* 2 Str. 832, 865, and *ante*, 20, & 163, in note.

† 2 Salk. 666, and *ante*, 20.

‡ 2 Nol. 449.

§ 2 Salk. 477.—2 Nol. 459.

¶ After what has been said (p. 101.) respecting the division of the business of a quarter session of the peace into "*criminal*, and *civil*," and the exposition of what has been designed to be comprehended under the

A reference to the judge of assize, either of the whole case, or of some point of legal difficulty involved in it, used formerly to be a common practice, but is, of late, fallen much into disuse. For this change many reasons might be adduced, but they are unnecessary here. If any particular circumstances should make this mode eligible, the right still continues; but it has generally given place to a more eligible one, which is that of stating a special case for the determination of the court of king's bench. Reference to judge of assize.

This is carried into effect by the counsel agreeing to a statement of facts, which are usually corrected and settled by a reference to the chairman's notes.

The case so settled is to be signed by the junior counsel on each side. If no counsel are employed, or if they cannot agree upon a case, even with the assistance of the chairman, the latter may, with the concurrence of a majority of the justices on the bench, state and sign a special case himself.

There is no specific form or precedent, according to which a special case must be drawn; but nevertheless, there are certain rules to be collected from a long succession of determinations, which are, in substance, as follow: The justices, with regard to the civil business of the court, by the summary jurisdiction which is given to them, it has been observed, are placed in the situation of jurors, and judges, conjointly. They are to elicit the facts from the evidence, as jurors would do, and they are to judge of the law arising out of those facts in the common course, if they think fit. Out of this position arise two conclusions; viz. Form of the case.

After description, (p. 487.) it may be almost unnecessary to observe, in this place, that the subjects we are now considering as referable to a higher authority for determination, are such only as are treated of in Chap. 5; viz. what have been noticed is coming under the civil jurisdiction of the court. Although the mode of obtaining advice and authority on difficult points, as well on the criminal, as on the civil, business of a session, must be equally through the medium of an adjournment, what is now immediately under review must be understood to relate exclusively to the latter division; what respects the former being the subject of future discussion in a more advanced portion of this chapter.

The facts.

first, that they are not *compellable* to grant a special case, if they entertain no doubt whatever of the law: and therefore, though it is certainly, in point of candor, right to comply with the request of either of the litigant parties by doing so, where any *reasonable doubt* on the subject is suggested, they will best consult the interests of the public by refusing it where they believe the application to arise out of mere obstinacy, or a spirit of litigation. Secondly, that their authority to judge of the *law*, is the only one which in these cases they reserve for the superior court; whence it follows, that the *facts* make no part of the subject matter, on which the court above are to exercise their discretion, and therefore, having been found by the justices, *they* must be specifically stated in the case, and not the *evidence* from which they were deduced.* A very few examples may suffice for illustration. On an appeal respecting a pauper's settlement, where the question depends on an equivocal hiring, or a doubtful service for a year, the fact is to be deduced from the evidence, such as it may be, one way or the other, by the justices; and not the evidence, from which they draw their conclusion, stated.† So, whether a master gave a particular consent to his apprentice to serve a third person, is a matter of fact, which, let it rest on testimony ever so ambiguous, must be found, and not left doubtful on the face of the statement.‡ So in a question of settlement by residing on an estate, the session must state the interest which the pauper took, whether he came in by descent, or by purchase; and if the latter, the price of such purchase; § that it may appear on the face of the statement, that it was such a purchase as will confer a settlement.

Fraud is a fact.

FRAUD is a fact. This, therefore, like all other matters of fact, if it make any part of the case, to influence the opinion of the justices, must be specifically found by them and stated accordingly; for it is not enough to state such evidence, though clearly leading to the most palpable conclusion of fraud, for the court above to draw such con-

* Burr. S. C. 120.

† 1 E. R. 73.

‡ Burr. S. C. 682.

§ 1 T. B. 241.

clusion.* Cases have happened where the conclusion of fact drawn by the session, and the circumstances from which the inferences were deduced, have *both* been stated. Such a practice leads to this *inconvenience*; viz. that it leaves the question open for the court above to draw a different conclusion from that which the justices in session drew, and that without the same means of appreciating the credibility of testimony.† The objection, however, to this mode of stating both the evidence and the inference drawn from it, rests entirely on the inconvenient results from so doing, for there is nothing contrary to law or *propriety* in so doing; and there may arise occurrences in which the justices may even desire to be informed if they have drawn a right conclusion from the evidence stated.

Having seen the methods, by means of which the justices in session may *voluntarily* refer points of difficulty to be decided by a superior authority, we come lastly to the *compulsory* process of *certiorari*, by means of which the parties interested may, under certain defined restrictions, remove subjects cognizable by all inferior jurisdictions into the superior courts at Westminster. The removal of such, from the courts of quarter session, into that of the king's bench, is all, with which we have any concern at present. This writ may be obtained at any time before trial to *certify* and remove the proceedings, and it is usually done for one of the following purposes. 1st, To consider, and determine the validity of *appeals*, or *indictments*, and the proceedings thereon; and to quash, or confirm, them as there may be cause. 2dly, Where it is surmised that a partial or insufficient trial will probably be had in the court below. 3dly, In order to plead the king's pardon. 4thly, To issue process of outlawry against an offender, in those cases where the process of the inferior court will not reach him.‡ It requires no special case to authorize this writ, for it is a consequence of all inferior jurisdictions of record, to have their proceedings removable for the purpose of being reviewed by the court of B. R.§ No writ of error lies on

* 1 T. R. 458.—7 T. R. 105.

† Barr. S. C. 57. 171.

‡ 4 Black. Com. 321.

§ *Ante*, p. 616.

summary convictions, and therefore this writ of *Certiorari* is the only mode by which such revision can be obtained.* So necessary has it been considered for the furtherance of justice, that it cannot be taken away but by the *express words* of a statute; and no expressions, however strong, which only lead to an inference, however plain and legitimate, that the *certiorari* was designed to be taken away, will have that effect. This has been repeatedly decided.† And even where a statute do in express terms declare that the proceedings shall not be removed by *certiorari*, even this will not be sufficient to prevent its issuing at the *suit of the prosecutor*; for he stands in the place of the crown, and can have no interest on applying for this writ for the purposes of delay.‡

Supersedes all the proceedings in the inferior court.

Such writ of *certiorari*, when issued and delivered to the inferior court for removing any record or other proceeding, as well upon indictments, as otherwise, supersedes the jurisdiction of such inferior court, and makes all subsequent proceedings entirely erroneous and illegal; unless the court of king's bench remand the record to the court below, to be there tried and determined. It may be granted, generally speaking, either at the instance of the prosecutor, or defendant; the former as a matter of right, the latter as a matter of discretion; and therefore it is seldom granted to remove indictments from the justices of gaol delivery; or after issue joined, or confession of the fact, in any inferior court.§ The effect of it is to remove all the proceedings described in it, and the justices are bound to obey, on the production of it to them when sitting in their judicial capacity, and *that*, although it should have been issued irregularly and improperly.|| But if it be for the removal of an indictment before the justices in session, and be not delivered till after the jury have been sworn for the trial of it, the justices may proceed on it, and may set a fine to complete their judgment.**

* Paley, 212. † 2 Burr. R. 1040.—1 Barnard, 245.—Cowp. 523. 3 T. R. 522.—5 T. R. 542.

‡ Paley, 215.—15 E. R. 341. § 2 Hawk. 287.—4 Burr. R. 749. || Crom. 129. ** 2 Lord Raym. 1515.

This writ may be granted to remove convictions from individual magistrates, as well as proceedings from the court of session. If the justice, to whom it is directed, die with the recognizance, verdict, or conviction, in his possession, the writ may go to his executor, who must return the record. Removes proceedings of individuals as well as of courts.

Having given this general description of this writ, it remains to be noticed more particularly, *when* and *how*, it is to be obtained, and the forms observed in the return.

It is a general rule that the king has a right in every case in which the crown is a party, to demand a *certiorari*, and the court are bound to grant it. * And even though an act of parliament take away the *certiorari* in express words, the crown is an exception, and shall not be construed to be included in the general restriction, unless there be words in the statute which shew a specific intention in the legislature that it should be so. When grantable.

The Court of B. R. will not grant this writ for the removal of a conviction before justices of the peace, unless the party applying for it show some probable ground that injustice has been, or will be, done below; in which case it will be granted: † nor, generally speaking, for any indictments for offences, the heinousness or frequency of which, require all possible discouragement, unless a very strong ground be laid for it, as on an affidavit that a fair trial cannot be had below; ‡ or that the question has some special circumstances involved in it, which require some species of attention out of the ordinary course: nor to remove proceedings from a jurisdiction of superior eminence, as from any court wherein any of the judges of the land preside; nor even from the Middlesex sessions, because *they* are entrusted with a commission of oyer and terminer, like the judges of assize. § If an application be made for this writ, on account of special circumstances, by affidavit, the following may be sufficient illustration of the general form of such an one.

* 2 T. R. 89.

‡ 2 Ld. Raym. 1452.

† 5 T. R. 252.

§ Cowp. 283.

Affidavit in support of application by defendant, for Certiorari to remove an indictment from sessions, for not repairing highway.

In the King's Bench.

A. B., of, &c. gentleman, maketh oath and saith, that at the last general quarter sessions of the peace, holden in and for the county of L., a bill of indictment was preferred and found against the inhabitants of the parish of W., in the said county, for a nuisance in not repairing a certain common King's highway, leading from in the said county of L., towards and unto the town of H. in the county aforesaid, from a place called opposite, &c. containing in length three quarters of a mile, and in breadth thirty feet, extending from thence in a northern direction as far as W. church, in which said indictment it is alleged that the inhabitants of the parish of W. aforesaid, ought to repair and amend the said King's common highway, when and so often as it shall be necessary; and the deponent saith, that the *right or title to repair* said highway will come in question upon the trial of the said indictment as this deponent is advised and verily believes; and the determination of the said indictment may materially affect four other parishes similarly circumstanced by reason of an act of parliament passed in the year of his present Majesty's reign, entituled "An Act," &c. And the deponent further saith he is advised, and believes that it will be proper, to have the said indictment tried by a special jury, and absolutely necessary that the jury before whom the said indictment is tried, should, previous to the trial thereof, view the said highway, which special jury the defendants cannot have the benefit of at the quarter session of the peace.

A poor *rate* cannot be removed by *Certiorari*, on account of the inconvenience that would ensue to the poor by the delay; but all the orders of justices relating to it may be removed.*

Not granted so as to prevent an appeal.

A rule has obtained in B. R. not to grant a *Certiorari* to remove *orders of justices* from which appeals lie to the sessions, before the matter be determined on such appeals, because it would take away that privilege: but if the time for appealing be expired, the objection no longer exists.† And this rule only extends to abridge the authority of the court in cases where the right of appeal is limited to a particular time, as to the *next* quarter session; but where there is no restriction as to time, the rule does not apply, for otherwise the order could *never* be removed.‡

It has also been determined that where, by the words of

* 2 T. R. 355.—Doug. R. 116.

† Salk. 147.

‡ Cald. Ca. 173.

any act of parliament, the *Certiorari* is taken away, but by its general tenor, that is only done to give the option of appeal to the sessions, the right of proceeding by *Certiorari* is only barred by the party adopting the method of appeal.*

And if one party have the exclusive right of appealing, he may wave his privilege, and remove the proceedings at once into the court of B. R. †

A *Certiorari* does not lie to remove any but judicial acts, and even though the justices should exceed their authority, and be punishable for so doing, the remedy is not by means of this writ. ‡ And if such a writ issue incautiously or im- providently, the court of B. R. will supersede it. §

During term-time, the writ of *Certiorari* is granted by the Court upon motion of counsel,|| but in vacation a *fiat* for a *Certiorari* may be obtained from any of the judges of the court of B. R.,** who may grant, or reject, the application, according to their discretion, regulated by the circumstances of each case, and the rules before laid down. In the latter case it is issued with the signature of the judge granting it, and the clerk in court, on that authority, makes it out, and delivers it to the person applying for it, together with the recognizance which is to be entered into.

An early statute; †† after reciting that "indictments of riot, forcible entry, or assault and battery, found at the quarter sessions, are often removed by *Certiorari*," ENACTS, "that all such writs of *Certiorari* shall be delivered at some quarter session in open court; and the parties indicted shall, before allowance of such *Certiorari*, become bound unto the prosecutors in 10*l.* in such sureties as the justices at their sessions shall think fit, with condition to pay to the prosecutors, within one month after conviction, such costs and damages as the justices shall allow; and, in default thereof, it shall be lawful for the justices to proceed to trial."

* 2 T. R. 89.

† 2 Nol. P. L. 489.

‡ Cald. Ca 309. 339.

§ 1 Burr. R. 488.

|| 4 Wm. 3. c. 11.—8 & 9 Wm. 3. c. 33.

** Burr. S. C. 157.

†† 21 Jac. 1. c. 2.

How granted.

Statutes.
Indictments for
particular of-
fences.

Statute does
not extend to
all indictments.

Further provi-
sion by other
statute.

This statute did not extend to all indictments at sessions in general, but only to those particular ones therein mentioned.

By two subsequent statutes, * therefore, it was provided, that "*all the parties indicted at the general, or quarter, sessions of the peace, prosecuting a Certiorari, before the allowance thereof, shall find two sufficient manucaptors, who shall enter into a recognizance in the sum of 20*l*. before one or more justices of the peace of the county or place, or else before one of the judges of the court of King's Bench; (in which case such judge shall make mention of it under his hand, on the back of the writ). And also that the recognizance shall be with condition, at the return of such writ, to appear and plead to the indictment or presentment in the court of King's Bench, and at his own costs to procure the issue that shall be joined upon the said indictment or presentment, or any plea relating thereto, to be tried at the next assizes for the county wherein the indictment was found, after such Certiorari shall be returnable, if not in London, Westminster, or Middlesex; and if there, then to cause it to be tried the next term after that wherein such Certiorari shall be granted, or at the sittings after the said term, if the court of King's Bench shall not appoint any other time for the trial thereof; and if any other time shall be appointed by the court, then at such other time, and to give due notice of such trial to the prosecutor, or his clerk in court, and also that the party prosecuting such Certiorari shall appear from day to day in the said court of King's Bench, and not depart until he shall be discharged by the said court.*"

"And such recognizances, *Certiorari's*, and indictments, shall be filed in the King's Bench, and the name of the prosecutor (if he be the party grieved or injured, or some public officer,) indorsed on the back of the indictment; and if the person prosecuting such *Certiorari*, being the defendant, shall not, before allowance thereof, procure such manucaptors to be bound as aforesaid, the justices of peace

* 5 & 6 Wm. 3. c. 11.—8 & 9 Wm. c. 32.

may proceed to trial of the indictment, notwithstanding such *Certiorari*."

From the words, "*all the parties indicted*," it appears the purport of these statutes, that they shall extend only to *Certiorari*'s procured by *persons indicted* (whence it follows, that those which are procured by the *prosecutor* of an indictment, remain as they were at common law,*) and they only extend to indictments at the quarter sessions. †

And for the better preventing vexatious delays and expense, occasioned by the suing forth writs of *Certiorari* for the removal of convictions, judgments, orders, and other proceedings before justices of the peace, it is further enacted, ‡ "That no writ of *Certiorari* shall be granted, issued forth, or allowed, to remove any conviction, judgment, order, or other proceedings had, or made, by any justice of the peace, or the general, or quarter, sessions, unless such *Certiorari* be moved or applied for, *within six calendar months* next after such conviction, judgment, order, or other proceeding shall be had, or made; and unless it be duly proved, upon oath, that the party suing forth the same hath given six days' notice thereof in writing, to the justice or justices, or two of them (if so many there be), before whom such proceedings have been, to the end that such justices, or the parties concerned therein, may show cause, if they think fit, against the granting such *Certiorari*."

It has been determined, that the six days' notice required by this statute, must be given *before the rule to show cause is applied for*, and if it appears upon the motion that such notice has not been given, the court will not even grant the rule to show cause. §

Also, it has been determined, that this statute, which enumerates *convictions, judgments, orders, and other summary proceedings* before justices, does not extend to *indictments*, and therefore that to remove them the prosecutor is not compelled to give the six days' notice. ||

* 2 Hawk. c. 27.

† 3 Burr. R. 2462.

‡ 13 Geo. 2. c. 18.

§ 5 T. R. 279.

|| 1 E. R. 298.

Statutes do not extend to prosecutors of indictments.

Convictions, orders, judgments, and other proceedings.

Limitation.

Notice.

Not necessary to remove indictments.

Recognizance
with sureties
necessary.

By another statute of the same reign, * “no *Certiorari* shall be allowed to remove any judgment, or order, unless the party prosecuting it, before the allowance thereof, enter into recognizance, with sufficient sureties, before a justice of the county or place, or before the justices at sessions, where such judgment or order shall have been made or granted, or before a justice of the King’s Bench, in 50*l.* with condition to prosecute the same, at his own costs and charges, with effect, without wilful delay, and to pay the party, in whose favour the judgment or order was made, within a month after the same shall be confirmed, his full costs, to be taxed according to the course of the court. And if he shall not enter into such recognizance, or not perform the conditions, the justices may proceed and make such further order in such manner, as if no *Certiorari* had been granted.”

No *Certiorari*
to remove
county rates
except under
certain condi-
tions.

It has been determined, on the construction of these words, that the recognizance entered into must be for an entire sum of 50*l.* and that the party and his sureties entering into recognizances for two twenty-five pounds is bad.†

“No writ of *Certiorari*, to remove any county rates, (made in pursuance of the statute) or any orders or proceedings of the general, or quarter, sessions touching such rates, shall be granted, but upon a motion to be made in the first week of the next term, after the time for appealing from such rates and orders is expired; and, upon affidavit, or otherwise, that the merits of the question, upon such appeal, or orders, will, by such removal, come properly in the judgment of the said court; and no such writ of *Certiorari* shall be allowed, until sufficient security be given to the respective treasurers in the sum of 100*l.* to prosecute such writ of *Certiorari* with effect, and to pay the costs in case such rates or orders be confirmed; nor shall any such rates, orders, or proceedings be quashed for want of form only; and all charges attending such removal, shall be defrayed out of that, or any subsequent, rate.”‡

* 5 Geo. 2 c. 19.

† 8 T. R. 217.

‡ 12 Geo. 2 c. 29

It may be expedient, at the conclusion of this article, and by way of general summary, to repeat two observations; viz. that the court of B. R. will not encourage *vexatious* delay, by granting a *Certiorari* to remove proceedings, where it appears clearly that the justices have been right in what they have done; and also, that none but judicial acts of magistrates are removeable by it. But these are only general rules, to which there are a few exceptions;—the principal of which are, where the Crown is a party, and requires the issuing of the writ; where an order of justices being defective, it becomes necessary to remove it, to give them an opportunity of reviewing the case, in order to make a valid one; and lastly, where an order having been made in favour of a party, to enforce the execution of it, he is obliged to resort to this remedy. In all these cases the restrictions of six months for the application, as well as the notice to the justices, are dispensed with.

The notice generally necessary to be delivered to the justice, or justices, or other persons, should be in some such form as the following.

To A. B. esq. one of his Majesty's justices of the peace, in and for the [or as the case may be.]

Whereas you did on the day of in the year of our Lord take the examinations of and and upon such examinations as aforesaid, (or as the case may be) did issue your order, or did convict, &c. (or as the case may be). And whereas it appears that [here state the objections to the order, conviction, or other proceeding] and moreover that the said (order, conviction, or other proceeding) was irregular and illegal, wherefore the said being resolved to seek a remedy for the great injury which he (or they) has (or have) received and sustained by means of the said (order or conviction, or other proceeding), I do hereby, on behalf of the said according to the form of the statute in that case made and provided, give you notice that his Majesty's court of king's bench will, in six days from the time of your being served with this notice, or as soon after as counsel can be heard, be moved on the behalf of the said for a writ of *Certiorari* to issue out of the said court, and to be directed to (the proper officer of the quarter session of the peace, if it be a record of session, or

otherwise, to the justice in whose possession it ought to be^o) for the removal of (the removal of the record of, &c. as the case may be) into his Majesty's said court of king's bench. Dated, &c.

P. Q. Attorney for the said

Form of Writs of Certiorari.

Writ of certiorari to two committing justices to certify information, examination, and deposition upon which prisoner was committed.

George the Third, by the grace of God of the United Kingdom of Great Britain and Ireland, King, defender of the faith, to C. D. and E. F. esquires, two of our justices assigned to keep our peace in and for our county of..... and also to hear and determine divers felonies, trespasses, and other misdemeanours committed within our said county, and to every of them, greeting.

We being willing for certain reasons that all and singular informations, examinations, and depositions, taken by and remaining with you, or either of you, in a certain case of felony, or suspicion of felony, charged against A. B. and for which you or one of you, have committed the said A. B. to the prison (..... as it is said, be sent by you before us, do command you, and every of you, that you, or one of you, do send us immediately after the receipt of this our writ, all and singular the said informations, examinations, and depositions, with all things touching the same, as fully and perfectly as they have been taken before you, and now remaining in your custody by whatsoever name the said A. B. is called in the same, together with this writ, that we may further cause to be done therein what of right and according to the law and custom of England we shall see fit to be done. At Westminster, the..... day of..... in the.... year of our reign.

By the Court, (or as the case may be).

Witness, Edward Lord E.

Writ of certiorari to remove an indictment from the quarter sessions into B. R. and its return.

George the Third, by the grace of God, of Great Britain, France, and Ireland, King, defender of the faith, and so forth. To the keepers of our peace, and to our justices assigned to hear and determine divers felonies, trespasses, and other misdemeanours committed within our county of..... and to every of them greeting. We being willing, for certain reasons, that all and singular indictments of whatsoever trespasses, contempts, and assaults, whereof G. A. and M. O., gentlemen, are indicted before you (as it is said) be determined before us, and not elsewhere, do command you and every of you, that you or one of you do send under your seals or the seal of one of you before us,

on the morrow of All Souls, wheresoever we shall then be in England, all and singular the said indictments, with all things touching the same, by whatsoever name the said G. A. and M. O. are therein called, together with this our writ, that we may further cause to be done thereon what of right, and according to the law and custom of England we shall see fit to be done. Witness, William lord M. at Westminster, the nineteenth day of June, in the year of our reign.

By the Court.

Especial care should be taken that the proceedings to be removed are correctly described in the writ; for if there be any variance between the *Certiorari*, and the record to be removed, the justices are not obliged to remove such record.* As, *ex. gr.*, it be for the removal of an indictment only, it will not be sufficient to remove the *whole record* after conviction; or if it be directed to the justices of a county, where in fact they are only the justices of a division, or liberty, or other portion of a county, or of a city or borough within that county; or if any other materially erroneous description of person, or place, or previous proceeding, occur in it.† Some things however are considered immaterial, and in these trifling errors will not vitiate, as, *ex. gr.*, in the misspelling of a sur-name, or in giving the name of a person without *any* addition.‡ But a wrong christian name, or a gross error in the addition of rank or title, will be fatal.§

The writ, when it is issued to remove any recognizance, or when the defendant is in custody, is signed by a judge of the court from which it issues; but in other cases, only the *fiat* for its issuing is so signed.||

The record itself, or the tenor of it, according to the directions of the writ on the circumstances of the case, must be returned; and *that* without any extraneous matter, or explanation.**

On non-compliance, a rule issues for the return, and, on

* Dalt. c. 195.—Burr. S. C. 112. † Hawk. c. 27.—1 Salk. 145. 264.

‡ 2 Hawk. c. 27.—Cro. Eliz. 172. § 1 Str. 116. || 2 Hawk. c. 27.

** Dalt. 195.—2 Salk. 492.

disobedience, an attachment,* but the writ is of no effect, unless delivered before the time for its return be expired.†

And the return must always be on parchment, for a return on paper has been held to be irregular.‡

The writ, if directed to the session, is usually returned by the chairman of the day; if to individual magistrates, by those to whom it is directed. It should be under the seal of an inferior court, if to any such directed; but if to any court not having a common seal, under the seal of the person making the return.§

A recognizance taken by a justice of peace ought to be certified by such justice *only*, till it be made a record of sessions; after which it shall be certified in the same manner as the other records of sessions.||

And upon a *Certiorari* to remove a conviction by a justice of the peace, a return that the record is returned to sessions and that a copy is annexed to the writ, is sufficient, because justices ought, in all cases, to return convictions to sessions.**

The return to a *Certiorari*, for the removal of an indictment, ought to have the clause, "*and also to hear and determine divers felonies,*" &c. in the description of the justices who make the return, *wherever such clause is necessary in the caption of the indictment*, as for riots, forcible entries, and the like.††

Practice.

The writ of *Certiorari*, as has been observed, issues from the crown-office, and enough has been introduced respecting its form, so far at least as is necessary to be inserted here. The attorney for the party applying for it, on receiving it, if it be directed to a session respecting an order, carries it, together with the recognizance to prosecute, to the clerk of the peace, who draws up, on parchment, a record of the order, in conformity to the entries made in the

* 1 East's R. 298.

† 2 Hawk. c. 27.

‡ 1 Barnardist, 113.

§ Cald. Ca. 297.—2 Hawk. c. 27.

|| Cro. Jac. 669.

** 2 Term R. 285.

†† 2 Hawk. c. 27.

session's book. If the subject matter be a poor rate, as the rate itself cannot be removed, the entry of appeal must include the title of the rate, and the allowance by the justices.

The return to a *Certiorari* for removing an indictment, Form of return from a session. may be made in the following manner, on a distinct piece of parchment.

First, on the back of the writ, write the following words:

"The execution of this writ appears in a certain schedule hereunto annexed."

..... } Be it remembered, that at the general quarter
(to wit.) } session of the peace of our sovereign Lord the
King, held at, in and for the said county of on
Wednesday in the first week after the close of *Easter*, that is to
say, the..... day of in the year of the reign of
our sovereign Lord George the Third, King of the United
Kingdom of Great Britain, &c. before A. B., C. D., E. F., and
others their fellows, justices of our said Lord the King, assigned
to keep the peace of our said Lord the King, within the said
county of, and also to hear and determine divers felonies,
trespasses, and other misdemeanors, in the said county com-
mitted, upon the oath of W. J., B. J., &c. [*here insert the
names of the jurors by whom the bill was found*] good and lawful
men of the county aforesaid, then and there sworn, and charged
to enquire for our said Lord the King, and the body of the said
county, it is presented in manner and form, as appears in a
certain indictment annexed to this schedule.

P. Q. Clerk of the Peace for the said county.

To this schedule annex the record of the indictment, and send all up together.

The return to a *Certiorari* for removing a *Conviction* make as follows:

At the General Quarter Sessions of the Peace of our Lord Return of order of ses-
sions confirm-
ing conviction.
the King, held at....., in and for the said county, on.....
in the first week after the close of *Easter*, to wit, on the.....
day of....., in the year of our Lord....., and in the.....
year of the reign of our Sovereign Lord George the Third, be-
fore M. N., O. P., &c. Justices of our said Lord the King, as-
signed to keep the peace of our said Lord the King in and for

the county of., and also to hear and determine divers felonies, trespasses, and other misdemeanors committed within the said county.

Whereas by a Conviction or Judgment, bearing date the day of., in the year., under the hands and seals, of, &c. thereby setting forth, &c. (*set out the whole of the Conviction in the third person, and in the past tense.*) And whereas he the said C. D. (*the person convicted*) did appeal against the said Conviction or judgment to the then next and now last court of General Quarter Sessions of the Peace held at., in and for the said county of., on Tuesday, the. day of January, in the year, &c. when the said appeal was ordered to be continued to this present Sessions, and of which said order of continuance the said A. B. (*the prosecutor*) had ten days' notice previous to this present Sessions: Now, upon hearing the said appeal, and what hath been alledged and proved on each party's behalf, and full debate and consideration had in the premises, It is ordered by this Court, that the first mentioned Conviction or judgment shall be and is hereby confirmed and made absolute: And it is further ordered by this Court, that the said C. D. upon sight of this order, or a copy thereof left with him pay to the said A. B. the sum of.^l. towards the costs and charges in the law by him the said C. D. reasonably expended in and about the defence of the said appeal.*

Adjournment.

Confirmed.

Award of costs where the sessions are required by the statute to award costs on appeal.

By the Court.

Form of a return from a single Justice.

County of. } I, A. B. one of the Keepers of the Peace
(*to wit.*) } and Justices of our Lord the King assigned to keep the peace within the said., and also to hear and determine divers felonies, trespasses, and misdemeanors in the same committed, by virtue of this writ to me delivered, do under my seal return into his Majesty in his Court of King's Bench, the. of which mention is made in the same writ, together with all matters touching the same. In witness whereof, I the said A. B. have to these presents set my seal.

Given at. in said county the. day of. in the. year of the reign of.

Where no particular form is directed by statute, it may reasonably be supposed some little difference of prac-

* The whole of the conviction as returned by the magistrate is here set out, but it has been held sufficient to set out the substance.

tice may prevail; but the substance of all returns to these writs may be collected from the foregoing.

Whatever form, however, the return assume, if from the session, the orders having been annexed to the writ, the clerk of the peace remits them to some person in London, with the approbation of the party applying, to be delivered by him into the crown office.

Return to be forwarded to the crown office.

With the ulterior proceedings, in the court above, we can have little concern here. It will be sufficient, by way of general information, to notice, that, after the return has been thus made, the first proceeding is a motion to file the order, after which the regular course is pursued till the subject is argued by counsel. If, upon such argument, there appear any thing defective in the return, the court will make a rule that the case shall be sent back again, either generally to be re-stated, or for additional information on any particular point of it. This rule, together with the original record, is re-delivered to the clerk of the peace, for enquiry at the next session, if belonging to the sessions of the peace; and the matter, if it be one of *facts*, must be enquired into *de novo*, as if nothing had passed on it before,* but otherwise, if some mere informality arising with the justices.†

Ulterior proceedings.

Any attempt to compress within the compass of a section, in a compendium of this description, a *general dissertation* on the subject of Costs, would be idle; and a *particular enumeration* of instances respecting the allowance of them by statute, or otherwise, under all their different aspects, would be worse than idle; it would mislead, because it could not be sufficiently comprehensive for universal application.

A few general rules, and those too with *reference* to cases of the most ordinary occurrences before justices, are all that can be practicable in this particular portion of the volume.

General rules respecting costs.

* 2 Bott. 736—749.

† Burr. S. C. 682.

1st. Then, of Costs on the last treated subject, the removal of proceedings by writ of Certiorari.

2dly. On Criminal prosecutions.

3dly. On Appeals against Poor-rates.

4thly. On Appeals against Orders of removal.

5thly. Costs of cure and maintenance; to be endorsed upon a suspension of an Order of removal.

6thly. Upon Appeals against Overseers' accounts.

These are all the instances relative to costs, as an *exclusive* subject of consideration, upon which it has been found convenient to enter in this place. Others occur incidentally, in treating of the different matters which give occasion to them;* and the remainder (which are not of ordinary occurrence) must be sought in the respective statutes which create, or declare, offences, regulate the modes of prosecution, and direct the consequences.

1st. The first statute on the subject immediately under review, as has been already observed, and which it may be right to notice again here, is 21 Jac. 1. c. 8. which is (*inter alia*) "to prevent abuses in procuring writs of certiorari for removing indictments found before justices of the peace in their general sessions."

This statute enacts, that *certioraries* shall not be thence

* Especially in presentments	p. 107
in informations	109
in convictions	646
in appeals respecting pawnbrokers	655
in appeals respecting apprentices	719
in ditto respecting bastards	721
in ditto respecting distresses	736
in ditto respecting gaming	735
in ditto respecting alehouses	736
in ditto respecting bread	742
in ditto respecting coaches	744
in ditto respecting fish	751
in ditto respecting prohibited games	775
in ditto respecting hawkers	783
in ditto respecting highways	788
in ditto respecting watchmakers	804

forth allowed, to remove indictments from sessions of the peace, unless the indicter will be bound to pay costs to the prosecutor by recognizance with sureties.

The statute 5 & 6 W. & M. c. 11. amended and continued by 8 & 9 W. 3. c. 33. enacts, that the recognizance shall have the name of the prosecutor inserted on it,* and if the defendant prosecuting the writ of *certiorari*, be convicted of the offence for which he was indicted, † then the court of B. R. shall give *reasonable costs* to the prosecutor, if he be the party *grieved*, or injured, or be a justice of the peace, mayor, bailiff, constable, headborough, tithingman, churchwarden, or overseer of the poor, or any other civil officer, who shall prosecute on account of any fact committed or done, that concerned him *as officer*, or be taxed according to the course of the said court, who shall for the recovery thereof, within ten days after demand and refusal of payment, on oath, have attachment awarded, and the recognizance not to be discharged till the costs are paid.

On these words it has been determined,

1st. That to come within the description of "*a party grieved*," there must be some actual injury sustained. ‡

2dly. That "*as officer*" means in the actual execution of the duty of an office, and that he must be a prosecutor *and fide ex officio*, § and not a mere voluntary prosecutor, though in office. ||

By the 5 Geo. 2. c. 19. before mentioned, ** "The recognizance shall be certified to the King's Bench, and there

Person entitled to costs can compel payment.

* To entitle the prosecutor to costs, it is enough to prove that he was charged, *by affidavit*, without his name being indorsed. *R. v. Smith*, Burr. R. 54. But it does not follow, that the person, whose name is indorsed, is the prosecutor, for it may be only that of a witness. It is to be determined by evidence who is the prosecutor. *R. v. Commerell*, M. & S. 203.

† Meaning an effectual conviction, for no costs can be taxed, if the judgment be arrested. *R. v. Turner*, 15 E. R. 570.

‡ *R. v. Ingleton*, 1 Wils. R. 139.

§ *R. v. Williams*, 1 T. R. 32.—*R. v. Dewsnap*, 16 E. R. 194.—*R. v. Littleworth*, 5 T. R. 33.

|| *R. v. Sharpless*, 2 T. R. 47.

** *Ante*, p. 842.

filed with the *certiorari*, and order or judgment thereby removed; and if the said order or judgment shall be confirmed by the court, the persons *entitled to such costs*, for the recovery thereof, within ten days after demand made of the person who ought to pay, upon oath made of such demand and refusal, shall have an attachment for contempt, and the recognizance shall not be discharged, until *the costs shall be paid*, and the order, so confirmed, complied with, and obeyed.

Costs on informations.

2dly. Where any complaint shall be made before any justice, and any warrant or summons shall issue in consequence thereof, it shall be lawful for such justice to award Costs to be paid by either of the parties, as to him shall seem meet, to the party injured; and in case such person shall not forthwith pay, or give security for the same to the satisfaction of the justice, the same shall be levied by distress. And if goods and chattels of such person cannot be found, the justice shall commit him to the house of correction for the place where such person shall reside, to be kept to hard labour not exceeding one month, nor less than ten days, or until such sum, together with the expences attending the commitment, be first paid.*

But upon the conviction of any person, upon any penal statute, where the penalty shall amount to, or exceed, 5*l.* the said costs shall be deducted by the justice, according to his discretion, out of the penalty, so that the deduction shall not exceed one fifth part.†

Authority of the sessions over those matters.

And the justices in session may lay down, or alter, from time to time, such rules, as to costs to be allowed to any person by virtue of this act, as to them shall seem just: which rules having received the approbation and signature of one of the judges of oyer and terminer, or general gaol delivery, at the assizes for the county, shall be binding, and not otherwise; and no person shall be allowed any greater sum than according to such rules.‡

* See *ante*, p. 109, and for the forms of awarding costs and levying them, &c. see Pract. Expos. *title*, Costs.

† See *ante*, p. 694.

‡ 18 Geo. 3. c. 19.

But in many instances where a statute creates an offence, and gives a penalty exceeding 5*l.*, it also gives costs.*

The costs or expences of conveying any person charged with an offence before a justice, to gaol, are directed, by an early statute, to be paid by the offender, *if able*. † On commitment by a justice.

But, as that is seldom the case, they are ordered, by a subsequent statute, to be borne by the respective counties, and to be paid by the treasurer on an order from a justice. ‡

The court, before whom any person has been tried and convicted of any grand or petit larceny, or *other felony*, may, at the prayer of the prosecutor, and on consideration of his circumstances, order the treasurer of the county, &c. to pay such sum as they shall judge reasonable, not exceeding the expences he was put to in carrying on the prosecution, with reasonable allowance for his time and trouble; and the clerk of assize, or of the peace, shall, forthwith, make out such order, and deliver the same to the prosecutor on paying 1*s.* and the treasurer shall pay the same on sight, &c. § On prosecution by a court if defendant convicted.

The court before whom any person has been tried and convicted, of any grand or petit larceny, or *other felony*, and before whom any such person has been tried and acquitted, (in case it shall appear to the said court that there was a reasonable ground of prosecution, and that the prosecutor had *bond fide*, prosecuted), may order the treasurer of the county, riding, &c. to pay to such prosecutor such sum as they shall think reasonable, not exceeding the expences he was, *bond fide*, put to, making also, if he shall appear to be in poor circumstances, a reasonable allowance for his trouble and loss of time, which order the clerk of assize, or clerk of the peace, respectively, shall, forthwith, make out, and deliver to him, being paid for the same 1*s.* and no more, and the treasurer of the county, &c. on sight of the order, shall forthwith pay the same. Costs after trial.
Altho' defendant acquitted.

* Where a statute gives *double costs*, they are calculated thus : 1*st*, The common costs ; and then half the common costs.

If *treble costs*, first, the common costs ; secondly, half of these, and then half of the latter.—*Tidd on Costs*, 56.

† 3 Jac. c. 10.

‡ 27 Geo. 2. c. 3.

§ 25 Geo. 2. c. 26.

Inferior jurisdictions.

And the justices of inferior districts, having jurisdiction to try *felons*, and raising their own rates, independent of the county, in which they are locally situate, may make such regulations respecting such districts.*

No costs to be ordered by justices in trials for misdemeanors.

But the justices cannot order the costs of a prosecution for a misdemeanor to be paid by the treasurer of a county, out of the county rates, under the authority of any statute. Those just adverted to, only authorise such order in cases of prosecution for *felony*; and the 12 Geo. 2. c. 29. by which the payments that had been previously ordered by many separate statutes (which were consolidated by the last mentioned statute), respects only *county purposes*, properly so called.†

Otherwise, in trials for defending themselves on county business.

But it has been decided, that, where any duty is imposed on a county, and where costs necessarily and incidentally arise, in questioning the propriety of acts done to enforce that duty, the necessary charges respecting all things relating to the *subjects themselves*, for which the justices were empowered to order payment, must, of course, be borne from the same source.‡

Costs on appeal against a poor rate.

3dly. It is enacted, by 17 Geo. 2. c. 38, "that, on appeals against poor-rates, the court may award reasonable Costs to either party." But the appeal must be actually entered and determined, to authorize them to give Costs, for that is made a condition precedent by the statute. One gave notice of his intention to appeal against a rate at the next quarter session, but, on the day before the session, countermanded his notice. The parish moved for Costs for the expence they had been put to, in preparing to support the rate, but the court of session thought they had no power to award them, as the appeal had never been tried; and of this opinion was the court of B. R. on the question being submitted to them.§

On appeal against order of removal.

4thly. But on appeals against orders of removal, it is en-

* 6 T. R. 237.

† 4 T. R. 591.

‡ 7 T. R. 377.

§ 8 T. R. 584.

acted by 8 & 9 Wm. 3. c. 30, "That the justices in session, upon proof being made, before them, of notice having been given of any such appeal, by the proper officers, to the church-wardens or overseers of any parish or place (though they did not afterwards prosecute such appeal) shall, *at the same session*, order to the party, in whose behalf such appeal shall be determined, or to whom such notice shall appear to have been given, such costs and charges in the law, as by the said justices, in their discretion, shall be thought most reasonable and just; to be paid by the church-wardens, overseers, or any other persons, against whom such appeal shall be determined, or by the person that did give such notice: And if the person ordered to pay such Costs, shall live out of the jurisdiction of such court, any justice where such person shall inhabit, shall, on request to him made, and a true copy of the order for the payment of such costs produced, and proved by some credible witness on oath, by his warrant, cause the same to be levied by distress, and if no such distress can be had, shall commit such person to the common gaol there to remain by the space of twenty days."

On the construction of this statute, it has been decided, first, that it is not compulsory upon the justices to give Costs, but they are to judge whether any are to be allowed, or not.* But, secondly, that if the session do not hear the appeal, but adjourn it to a subsequent session, they cannot give Costs on the mere adjournment without a hearing. †

Sessions to judge whether costs are to be given.

Cannot give them on a mere adjournment.

5thly. The justices are also empowered to allow further costs, under the denomination of *maintenance*, by a subsequent statute, in the event of their determination on the merits of the case being with the appellants, to such amount as shall appear to them to have been reasonably paid by the appellant parish for the relief of the pauper, between the time of removal and the determination of such appeal; to be recovered in like manner as the other costs. ‡

Maintenance to be allowed also, in certain cases.

An order of removal of justices, was quashed by the

Conditional allowance of maintenance bad.

* 2 Bou. 756. † Burr. S. C. 205. ‡ 9 Geo. 1. c. 7.—*Ante*, p. 614.

session for informality, and they then, on the presumption that another valid one would be made, made a conditional allowance of costs for maintenance from the time of the removal, on such valid order taking place. But this order, *as to costs*, was quashed by the court of B. R. because the justices in session must either give, or not give, costs, *at the time when they make their order*.*

Maintenance
ascertained by
others, and
judgment given
by the court
accordingly.

The court of session, as has been observed in a previous section, cannot delegate their authority to any other person, but it is not unusual, after allowing reasonable maintenance according to the statute, to direct that the expences which have been incurred in maintaining the pauper, shall be ascertained before the clerk of the peace, and reported by him to the court.†

Cost and
charges on sus-
pension of an
order of
removal.

“As poor persons are often removed during the time of their sickness, to the great danger of their lives;” it is, for remedy thereof, enacted, that, “in case any poor person shall be brought before any justice of the peace, for the purpose of being removed from the place where he or she is inhabiting, by virtue of any order of removal, and it shall appear to the said justices that such poor person is unable to travel, by reason of sickness or other infirmity, or that it would be dangerous for him or her so to do, the justices making such order of removal are required and authorized to suspend the execution of the same, until they are satisfied that it may safely be executed, without danger to any person who is the subject thereof;—which suspension of, and subsequent permission to execute, the same, shall be respectively indorsed on the said order of removal, and signed by such justices.

To be paid by
the parish.

And the charges proved on oath to have been incurred by such suspension of any order of removal, may, by the said justices, be directed to be paid by the church-wardens and overseers of the parish or place to which such poor person is ordered to be removed, in case any removal shall take place, or in case of the death of such poor person before the execution of such order.

* Burr. S. C. 194.

† Cald. Ca. 30.

And if the church-wardens or overseers of the parish, township, or place, to which the order of removal shall be made, or any or either of them, shall, upon the removal, or death, of such poor person ordered to be removed, refuse or neglect to pay the said charges within three days after demand thereof, and shall not within the same time give notice of appeal, as is hereinafter mentioned, it shall be lawful for one justice, by warrant under his hand and seal, to cause the money mentioned in such order to be levied by distress and sale of the goods and chattels of the person or persons so refusing or neglecting payment of the same, and also such costs attending the same, not exceeding forty shillings, as such justice shall direct; and if the parish, township, or place, to which the removal is made, or was ordered to be made, before the death of such person as aforesaid, be without the jurisdiction of the justice issuing the warrant, then such warrant shall be transmitted to any justice having jurisdiction within such parish, township, or place, who upon receipt thereof is to indorse the same for execution.

But if the sum so ordered to be paid, *on account of such costs*, exceed the sum of twenty pounds, the party aggrieved may appeal to the next general or quarter session, *as they may do against an order of removal*; and if the session be of opinion that the sum so awarded be more than of right ought to have been directed to be paid, such court may strike out the sum contained in the said order, and insert the sum which, in their judgment, ought to be paid; and in every such case the said court shall direct that the said order so amended shall be carried into execution by the justices, by whom it was originally made, or in case of the death of either of them, by such other justices as the court shall direct.*

Upon the words of which statute the following constructions have been put by the court of B. R.

1st. That the expression "*in case any poor person shall be brought before any justice*," means merely *judicially*

On non-payment and no notice given of appeal to be levied by distress and sale.

Where the sum exceed 20l, an appeal to sessions where it may be diminished.

Construction of the statute

* 35 Geo. 3. c. 101.

brought, not *personally*, for he or she may be so ill, as to render that dangerous, or impossible.*

2dly, That the indorsement on the warrant of distress, directed to be made by the justice, is a mere ministerial act, and the direction compulsory upon him.†

3dly, That the clause respecting the appeal against the charges is to be thus understood. If the party aggrieved, and intending to appeal against the charges, give notice within the three days after demand, by such notice he prevents any distress being made; but if he do not give the notice within the three days, in order to prevent the inconvenience of a distress, he does not thereby lose his right of appeal afterwards, which is given to him on the same terms as for an appeal *against an order of removal*.‡

4thly, That, although, by the statute of Will. 3, which gives the appeal against removals to the party *aggrieved*, there could be no grievance to the parish to which the order of removal was made, till it was actually executed; yet, as by this statute of 35 Geo. 3, even though the pauper die during suspension, and before the order be executed, a grievance arises in consequence of the *Costs*, which it directs to be levied on the said parish, it is *an actual grievance*, though growing out of a subsequent statute on the same subject matter, and therefore the right of appeal attaches, as arising upon the determination of the justices respecting the settlement of the pauper.§

35 Geo. 3, re-
cited. By the statute 49 Geo. 3. c. 129, reciting the statute 35 Geo. 3. c. 101, whereby it is amongst other things enacted, "That in case any poor person should be brought before any justice or justices of the peace, for the purpose of being removed from the place where he or she was inhabiting or sojourning, by virtue of any order of removal, or of being passed by virtue of any vagrant pass, and it should appear to the said justice or justices that such poor person was unable to travel, by reason of sickness or other infirmity, or that it would be dangerous for him or her so

* 9 E. R. 101.

† 9 E. R. 97.

‡ 1 E. R. 117.

§ 13 E. R. 51.

to do, the justice or justices making such order of removal, or such vagrant pass, were required and authorized to suspend the execution of the same, until they are satisfied that it might safely be executed without danger to any person who was the subject thereof, and that the charges proved upon oath to have been incurred by such suspension of any order of removal, might by the said justices be directed to be paid by the church-wardens and overseers of the parish or place to which such poor person was ordered to be removed, in case any removal should take place, or in case of the death of such poor person before the execution of such order: and that by the same act it was further enacted, That in case of an appeal against any order for the payment of such charges, if the court of quarter sessions should be of opinion that the sum so awarded be more than of right ought to have been directed to be paid, such court might, and was thereby directed to, strike out the sum contained in the said order, and insert the sum which in the judgment of such court ought to be paid; and that in every such case the court of quarter sessions should direct that the said order, so amended, should be carried into execution by the said justices by whom the order was originally made, or either of them, or in case of the death of either of them, by such justice or justices as the court should direct: And that whereas it was expedient, that the power of putting an end to the suspensions of any such order of removal or pass, and of executing the several or other authorities aforesaid, should not be confined to the order of the justice or justices making such order or passes:" It is enacted, "That from and after the passing of this act, in all cases wherever the execution of any order of removal, or of any vagrant pass, shall be hereafter suspended, by virtue of the said recited act, it shall be lawful for any other justice or justices of the peace of the county or other jurisdiction, within which such removal or pass shall be made, to direct and order that the same shall be executed, and to direct the charges, to be incurred as aforesaid, to be paid, and to carry into execution any such amended orders as aforesaid, as fully and effectually to all intents and purposes as the said respective

Where any order of removal, &c. shall be suspended, any justice for the place may order the same to be executed, &c.

powers and authorities can or may be executed by the said justices who shall make any such order of removal, or by the justice who shall grant any such pass as aforesaid."

How time of
appealing shall
be computed.

When the execution of any such order of removal shall be suspended, the time of appealing against such order shall be computed according to the rules which govern other like cases, from the time of serving such order, and not from the time of making such removal under, and by virtue of, the same.

And it is also recited, "That in order to avoid any pretence for forcibly separating husband and wife, or other persons nearly connected with, or related to each other, and who were living together as one family at the time of any order of removal made, or vagrant pass granted, during the dangerous sickness or other infirmity of any one or more of such family, on whose account the execution of such order of removal, or vagrant pass, was suspended;" and enacted and declared, "That where any order of removal, or vagrant pass, shall be suspended, by virtue of this, or of the said recited act, on account of the dangerous sickness or other infirmity of any person or persons thereby directed to be removed or passed, the execution of such order of removal, or vagrant pass, shall also be suspended for the same period with respect to every other person named therein, who was actually of the same household or family of such sick or infirm person or persons, at the time of such order of removal made, or pass granted."

Order of removal suspended in case of sickness, may be extended to other persons of the family.

Justice, when to take his examination and report it

And whenever it shall happen that any pauper is by age, illness, or infirmity unable to be brought up to a petty session to be examined as to his or her settlement, it shall be lawful for any one magistrate acting for the district where such pauper shall be, to take the examination of such pauper, and report the same to any other magistrates acting for the said district, and for the said magistrates upon such report, to adjudge the settlement of the said pauper, and make, and suspend, the order of removal as fully and effectually to all intents and purposes, as if the said pauper had appeared before the magistrates.

Settlement to be adjudged on such report.

6thly. It has been observed before, that the statute 43 Eliz. Costs on appeals against overseers' accounts. gives an appeal, indefinite in point of time, to the quarter sessions against overseers' accounts; and, that the 17 Geo. 2. c. 38. gives a similar appeal, but confines it to the next session, and accompanies it with an authority, to order Costs to either party.

And 50 Geo. 3. c. 49. which gives an additional security against the incorrect, or exorbitant, accounts of church-wardens and overseers, by directing, that a special session shall be holden for investigating such accounts, Special session to be holden to investigate the accounts. and gives such church-wardens and overseers an appeal Appeal with Costs. against any reductions or disallowances made by such justices in special session, to the *next general, or quarter session* of the peace, directs also, that the justices in such general or quarter session of the peace, shall, *if they think fit*, make an order that such church-wardens and overseers shall have the Costs by them incurred, defrayed out of the poor rates of the parish or place.

OUTLAWRY.

Outlawry is a punishment inflicted on a person for a What it is. contempt and contumacy, in refusing to be amenable to, and abide by, the justice of that court, which hath lawful authority to call him before them; and as this is a crime of the highest nature, being an act of rebellion against that state or community of which he is a member, so does it subject the party to divers forfeitures and disabilities.

But the law distinguishes between Outlawries in capital Of different descriptions. cases, and those of an inferior nature; for an Outlawry in treason and felony is of itself an attainder, and subjects the party to such an award thereupon to be made by the court where he is brought, as is suitable to the offence for which he is indicted and outlawed; for the law interprets the party's absence a sufficient evidence of his guilt, and without requiring further proof or satisfaction, accounts him guilty of the fact: on which ensues corruption of blood, and an absolute forfeiture of his whole estate real and per-

sonal, and many men who never were tried have been executed upon the Outlawry.*

Execution.

And if a man be indicted before justices of the peace, and thereupon outlawed, and be taken, and committed to prison, the justices of gaol delivery may award execution of this prisoner, for they are constituted to deliver the gaol.†

Names to be certified.

And by the statute 34 Hen. 8. c. 14. the clerks of the crown, clerks of assize, and clerks of the peace, are to certify into the King's Bench the names of all persons outlawed, attainted, or convicted; and upon letters from the justices aforesaid, certificates shall be made of such persons to the justices of gaol delivery.

Effects of it.

Though an Outlawry be an attainder, and equal to a conviction, or sentence by verdict or confession, it does not subject the party to any severer punishment, than the crime does, for which the Outlawry was pronounced; and therefore, if it be in a crime, for which clergy is allowable, the party outlawed shall be allowed his clergy; in the same manner as he who is convicted by verdict or confession.‡

It is said by Blackstone, that any person may arrest an Outlaw on a criminal prosecution, either of his own head, or by writ or warrant of *capias utlagatum*, in order to bring him to execution.§

From what jurisdiction process of Outlawry is to issue.

It is clear that the courts at Westminster may issue process of Outlawry, and that the court of King's Bench, either upon an indictment originally taken there, or removed thither by *certiorari*, may issue process of *capias* and *exigent* into any county of England, upon a *non est inventus* returned by the sheriff of the county where he is indicted, and a *testatum* that he is in some other county.

And also justices of oyer and terminer may issue a *capias* or *exigent* (and so proceed to the Outlawry of any person indicted before them), directed to the sheriff of the same county where they hold their session, at common law; and by the statute 5 Ed. 3. c. 11. they may issue process of *capias* and *exigent* to all the counties of Eng-

* Co. Lit. 128.—4 Burr. R. 2549.

† 2 Hale, 35.

‡ Hawk. c. 33.

§ 4 Black. Com. 320.

land, against persons indicted or outlawed of felony before them.*

But justices of gaol delivery, it has been said, cannot regularly issue *capias* or *exigent*, because their commission is to deliver the gaol of the prisoners therein being, so that those whom they have to do with, are always intended in custody already.†

And justices of the peace in their sessions may proceed to Outlawry, in cases of indictment found before them, and *that* by the common law; and also in cases of popular actions by the statute of 2 Jac. 1. c. 4. But it is said that they cannot issue a *capias utlagatum*, but must return the record of the Outlawry into the King's Bench, and there process of *utlagatum* shall issue. ‡

Justices may proceed to Outlawry.

Nevertheless, it has been holden by high authority, that, if one be outlawed before justices of peace upon an indictment of felony, they *may* award a *capias utlagatum*; for they that have power to award process of Outlawry, have also power to award a *capias utlagatum*, as incident to their authority and jurisdiction. §

The *exigent*, which is the immediate precursor of Outlawry, is a writ which lies in *actions personal*, where the defendant's person cannot be found, nor goods within the county to be distrained: also, in *indictments* of treason, or felony, where the party is not forthcoming, and on all indictments for trespass *vi et armis*, and all offences of a *higher* nature, but not on those of an inferior kind. It does not lie on any offence created by statute, unless specifically given, or *necessarily* to be inferred. ||

Exigent what.

This process lies also on *informations*, even though for offences, in which there is no actual force, as libels and the like; for the force is not the criterion, but the enormity of the offence. **

The writ is directed to the sheriff to proclaim and call the defendant five county court days, one immediately fol-

* 2 Hale, 198.

† Dalt. c. 193.—2 Hale, 52.

‡ 2 Hawk. c. 27.

† Ibid.

§ 12 Co. 103.

** 4 Burr. R. 2557.

lowing the other, charging him to appear upon pain of Outlawry. If he come not at the last proclamation, he is said to be *quinqies exactus*, and is then outlawed.

Persons under
12 years of
age.

No person under twelve years of age can be outlawed, because that was the earliest age at which they could be sworn to their allegiance in the Törn or Leet.

Forfeiture.

Outlawry in treason gives the forfeiture of the lands to the King, but in felony to the lord of whom they are immediately holden. But the bare judgment, without the return thereof of record, gives no escheat. But it must be returned by the sheriff, with the writ of *exegi*: or, it must be removed by *certiorari*; for the county court not being a court of record, the judgment given by the coroner in it is not matter of record.*

Proceedings
after the judg-
ment in
Sheriff's Court.

Reversal.

All Outlawries may be reversed by the defendant coming in upon the *capias utlagatum* and pleading error either of fact, or law. If it be in a criminal matter, he must plead in person; but in civil ones may do it by his attorney.

Rights restor-
ed.

After a reversal of Outlawry, the party is restored to his former rights. †

And this is all that it is thought necessary to submit on this subject, the proceeding to Outlawry being out of the ordinary course of practice at sessions, for which various reasons might be assigned, but for which *one* is sufficient; viz. that, for the generality of accusations preferred before that tribunal, the defendant is in the actual, or virtual, custody of the court, previous to the indictment being presented.

PARDON.

Pardon
whence flow-
ing.

“The King,” says a celebrated commentator on the English laws, “is the proper person to prosecute all public offences, and breaches of the peace, being the person injured in the eye of the law. And hence arises also another

* 2 Hale, 206.—1 Inst. 288.

† Co. Lit. 288.—2 Hawk. c. 30.

branch of the prerogative, that of pardoning offences; for it is reasonable that he only who is injured, should have the power of forgiving." *

And it seems to be a settled rule, that the King may pardon any offence whatsoever *after it is committed*, whether it be against the common, or statute, law, so far as the public is concerned in it, and this either before the attainer, sentence, or conviction, or after. †

Extent of the King's authority in granting Pardons.

But it seems agreed, that the King cannot, by any previous licence, pardon, or dispensation, make an offence dispensable, which is unlawful in itself, as being either against the law of nature, or so far against the public good, as to be indictable at common law; and that a grant of this kind, is plainly against reason and the common good, and therefore void. ‡

It is also expressly enacted by statute, that "no *dispensation* by *non obstante* of, or to, any statute, or any part thereof, shall be allowed; but that the same shall be void and of none effect, except a dispensation be allowed in such statute." §

If one be bound by recognizance to the King, to keep the peace against another by name, and generally to all other lieges of the King; in this case before the peace be broken, the King cannot pardon or release the recognizance, although it be made only to him, because it is for the benefit and safety of his subjects. ||

And releasing recognizances.

Neither can the King, by any charter whatsoever, bar any right of entry or action, or any legal interest or benefit, *actually vested* in the subject; and therefore it seems clear, that he cannot bar any action on a statute by the party grieved:—Nor even a popular action commenced *before his pardon*; for *after* an action popular is brought, the King can but discharge his own part; and cannot discharge the informer's part; because by bringing of an action, the informer has an interest therein.**

And barring actions.

* 1 Black. Com. 269.

† Ibid.

‡ 3 Inst. 238.

† 2 Hawk. c. 37.

§ 1 W. & M. Sess. 2. c. 2.

** 2 Hawk. c. 37.

Yet, before the action is brought, the King may discharge the whole (unless it be provided to the contrary by the act), because the informer cannot bring an action or information originally for his part only, but must pursue the statute.*

And staying
prosecutions.

Neither can the King pardon, where private justice is principally concerned in the prosecution of offenders. And there are also, in some cases, even where the King is sole party, some things which he cannot pardon; such as common nuisances for not repairing highways, or the like: for although the prosecution for redress and reformation thereof is, in such cases, vested in the King only, to avoid multiplicity of suits; yet this offence itself savours more of the nature of a *private* injury to each individual in the neighbourhood, than of a public wrong; and therefore it is settled, that the King cannot pardon either the nuisance or the suit for the same, because such pardon would take away the only means of compelling a redress of it. †

Thus much is all that it has been thought necessary to introduce, as to the constitutional right of the crown to grant pardons, in the abstract. On the other points of view, in which so prolific a subject may be considered, the only difficulty is to condense it sufficiently for practical purposes. With this design, all observations respecting general Pardons, either by the crown, or by act of parliament: the contested right of pardoning by the crown in case of *parliamentary impeachment*; and the obsolete practice of obtaining Pardon by approvement; are wholly omitted; ‡

The only Pardons, then, with which we are concerned here, are divisible into two species:

1. Pardons of course and of *common right*.
2. Pardons of grace and favour.

A Pardon is grantable of common right—First, to persons found guilty of excusable homicide.—Secondly, to certain felons and other offenders who discover their ac-

* 3 Inst. 231.

† 4 Black. Com. 298.

‡ 4 Black. Com. 330.

accomplices.—Thirdly, to persons to whom the King has by proclamation promised Pardon.

On the *first* of these divisions little may suffice, especially as it relates to an offence not commonly brought before justices in session.

By the statute of Gloucester, 6 Ed. 1. c. 9. it is enacted, that “if it be found by the county, that a person tried for the death did it in his defence, or by misfortune, then by the report of the justices to the King, the King shall take him to his grace, *if it please him.*”

Although, at first sight, it seems to be implied, that it is left to the discretion of the King, whether he will grant Pardon in such a case, or not; yet it is settled, that the words “*if it shall please the King,*” are only out of reverence, and were not intended to make the right of the subject to such a Pardon precarious: it has therefore been long determined, that, in such case a Pardon is grantable of right.*

And it is said, that upon removing the record by *certiorari*, he shall have a Pardon, and writ of restitution of his goods, as a matter of course and right, only paying for suing out the same. †

But to prevent this expence in cases where the death has notoriously happened by misadventure, or in self-defence, the judges will usually permit, if not direct, a general verdict of acquittal. ‡

Secondly, Pardons to felons and others who discover their accomplices, are generally provided by the several statutes which create the offences, as *mala prohibita*, or which regulate the mode of punishing the commission of such offences. This practice was first introduced in the reign of W. & M., in the case of robbery, § and was soon followed in that of Anne, || in burglary, house-breaking, horse-stealing, and shop-lifting. Most of the subsequent statutes, which have introduced new prohibitions, or have

Pardons to accomplices.

* 2 Hawk. c. 37.

† 4 Black. Com. 188.

‡ 5 Ann. c. 21.

↑ Ibid.

§ 4 & 5 W. & M. c. 3.

provided new remedies for existing offences, as, for fishing in private waters,* destroying works on navigable rivers,† &c. have followed the example, but especially those respecting the coin, and the revenue.

These provisions, however, *generally* relate to persons who are at large,‡ and who, to entitle themselves to a Pardon, as matter of right, must not only give evidence against, but must actually be the means of convicting by their evidence, other offenders. For on this subject it has been holden, that if the confession of the accomplice be such as, on the trial, the jury give no credit to, or it be a partial confession, it gives him no *legal right* to a Pardon. §

Accomplices
compelled to
give evidence
and to receive
a Pardon.

Before we quit this particular consideration of "*Pardons by statute to accomplices*," it may be useful, at least, to notice, in a recent instance, the extraordinary extension of the principle introduced by the statutes we have adverted to. By 39 and 40 Geo. 3. c. 106. for preventing combinations among workmen, in § 9. it is enacted, that "Every person offending, (i. e. *accomplice*) may (equally with all other persons,) be *compelled* to give evidence as witness on behalf of his Majesty, or the informer, upon any information to be made against any other person, &c. and in all such cases, every person having given his evidence, as aforesaid, *shall be indemnified*."

Pardons by
proclamation.

Thirdly, *As to the persons to whom the King has, by proclamation, promised his pardon.* It is clear, that all persons to whom the King has, by special proclamation in the gazette, or otherwise, promised his pardon, and who come in under the royal faith and promise, have a right to a Pardon; so clear, indeed, that not a word need be offered on the subject; for if the King have the right of pardoning at all, the pledge of his mercy, given in the authorized form of a

* 5 Geo. 3. c. 14

† 8 Geo. 2. c. 20.

‡ Not universally so, as frequently stated, for see 22 Geo. 3. c. 26. respecting felons under fifteen years of age, discovering the receivers of stolen goods.

§ Cowp. R. 335.

proclamation, must be sufficient. The only doubt that can ever arise on the subject, is where persons, *apparently* entitled by their offices to stipulate for a pardon, shall have been induced, by the obvious benefit of discovery, to exceed their authority; but the consideration of this occurrence comes more properly under the last division of our title, and which is the most important for the consideration of justices in session, viz.

Special Pardons of Grace and Favor. Pardons of *Grace and Favour*, to individual offenders, are placed in opposition to those of *right*, of which we have been treating, and are those of most interest in the contemplation of justices, because respecting *them* most is left to the magistrate's discretion; whether the question be considered with a view to the conviction of the principal participators in the offence, or to the Pardon of those on whose testimony conviction may have been accomplished.

Pardon of
grace and fa-
vour.

First, then, of Pardons of grace and favour to individual accomplices, *in order to procure* the conviction of some principal participators in the offence.

Blackstone says, "It has been usual for the justices of the peace, by whom any persons *charged with felony* are committed to gaol, to admit some one of their accomplices to become a witness (or, as it is generally termed, King's evidence), against his fellows; upon an *implied confidence*, which the judges of gaol delivery have usually countenanced and adopted, that if such accomplice make a full and complete discovery of that, and of *all other felonies*, to which he is examined by the magistrate, and afterward give his evidence, without prevarication or fraud, he *shall not* himself be prosecuted for that, or any other previous offence of the same degree." *

Justices' au-
thority to pro-
mise Pardons.

* 4 Black. Com. 331. This practice of admitting accomplices as witnesses for the prosecution, has been introduced in modern times, in imitation of, but, in truth, to get rid of, an ancient and inconvenient method for partially producing similar consequences, called *approvement* (for which the reader is referred to Black. Com. vol. 4. p. 330) and, in conformity with the source from which it is derived, only applies to felonies, or, in other words, to crimes of a higher nature than misdemeanors.

Under limitations.

In *substance*, and in *effect*, the doctrine advanced by the learned commentator is correct; but it should appear to be technically and precisely so *in law*, by what was laid down (as if in allusion to this very paragraph) with particular emphasis (on a trial which excited great interest and was more than commonly agitated) by Lord Mansfield C. J. in *Mic. Term*, 16 Geo. 3. on a case reserved from the Old-Bailey.* "A justice of peace," said he, "cannot pardon an offender, and tell him he shall be a witness against others; he cannot select whom he pleases to pardon or prosecute; and the prosecutor has even a less pretence to select, than the justice of peace." However, although the justices deceive the accomplice, under a promise, or assurance, or hope, of Pardon from them, which, in strictness, they have no right to make; yet if he make it and fair disclosure, at the time of his examination, if he knows, he will be entitled to a recommendation to mercy, and the King's Bench will in this case bail him, in order that he may apply for the King's Pardon; or the justice of gaol delivery, on all the circumstances relative to the prisoner's claim of indemnity being laid before them, will exercise their discretion in *deferring the trial* accordingly.

Judges will defer trial of accomplices under certain circumstances.

And justices in sessions are in the continual habit of exercising a similar discretion, as to deferring the trial of accomplices, whom it may be convenient to admit as witnesses for the conviction of others.

The same by Justices.

Indeed, the objects in both cases being the same, a general similarity runs through all the proceedings respecting this subject, whether it come before judges of assize, or justices in session; and in both the previous recommendation of the examining magistrates receive an equal degree of attention from the court, and the crown.

Mode of obtaining Pardons.

The method of pardoning at the assizes, and at the Old-Bailey, is this, A sign manual issues, signifying the King's intention of either an absolute, or conditional, pardon, and directing the justices of gaol delivery to bail the prisoner, in order to appear and plead the next general Pardon that shall come out, which they do accordingly; taking

* *Rex v. Rudd. Cowp. R. 336.*

his recognizance to perform the conditions of the Pardon, of any:—For the King may extend his mercy on what terms he pleases, and, consequently, may annex to his Pardon any condition that he thinks fit, whether precedent, or subsequent, on the performance whereof, the validity of the Pardon will depend.*

But if the party do not perform the condition of the Pardon, the Pardon becomes void, and he may be taken and executed on the first judgment. For the condition of the King's Pardon being gone, the party remains precisely in the same situation that he was the moment before the Pardon was granted, and being brought up to the bar, he may be remanded to his former sentence.†

It seems also to be laid down as a general rule, that wherever it may be reasonably intended, that the King, when he granted such pardon, was not fully apprized both of the heinousness of the crime, and also how far the party stands convicted thereof upon record, the pardon is void as being gained by imposition upon the King.‡

In conformity with this, it is expressly enacted by 17 Ed. 3. c. 2. that "in every Pardon of felony, granted at any man's suggestion, the suggestion, and name of him that makes it, shall be comprized: and if it be found untrue, the charter shall be disallowed, and the justices before whom the charter shall be alledged, shall inquire of the same suggestion, and if they find it untrue, shall disallow the charter." §

If the accomplice, who is recommended by the examining magistrate, as a witness to convict the principal, be in custody in Court, he is, on the motion of counsel, *instantly* admitted, almost as a matter of course (from the confidence properly, if not necessarily, given to such recommendation, sanctioned by the approbation of the counsel, who, it is reasonably to be presumed, only consents to take upon himself such responsibility on the clearest conviction of its expediency.) If he be under recognizance only, to appear when called upon (which is most commonly the case on suspicion of such felonies as are usually tried before the

Accomplices
how admitted
evidence.

* Hawk. c. 97.—1 Black. R. 479. † Leach's C. L. 73. 220. 330.

‡ 2 Hawk. c. 37.

§ 27 Edw. 3. c. 2.

court of quarter session) on such motion being made to the court, he is usually admitted in the same manner, though there be no such recommendation from the examining justice.

The mode of obtaining pardons.

Differences in the authority of Judges and Justices respecting pardons.

We come now, in the last place, to consider pardons of grace and favour to persons *convicted* of offences at sessions, and which, like those obtained at the assizes, or at the Old Bailey, may be either absolute, or conditional. The mode of obtaining them is, indeed, in a *general view* of it, similar, before whatever court the offender have been convicted; viz. by a recommendation of such court to the crown: but there are considerable differences on *particular points* between the authority of judges, and of justices, which it is necessary to notice. If a judge of assize, or at the Old Bailey, have any doubt on a point of law, arising in the case of any prisoner, he can respite the execution of his sentence, and take the opinions of the other judges on the subject; after the obtaining of which, the prisoner has the chance of being liberated as having been convicted against law, or of being recommended to mercy on the *whole circumstances* of his case.*

Not so, the justices in session. If a prisoner be convicted before them, they have no means of obtaining the opinions of the judges upon any point of law; it has even been made a doubt by some, whether they can respite their sentence, or the execution of it if passed, beyond the immediate session itself, their authority terminating with the actual separation of the justices composing the Bench; and lastly, they have no means of correcting themselves in any particular where it might be desirable, but by a process, at once tedious, expensive, and unauthoritative.†

Method of res-

In order, however, to meet these difficulties, in the best

* Nash's case, O. B. 1813, and many others.

† These have been grievances long complained of; and though some alleviation of them may be suggested in the controuling power of the Court of King's Bench, to correct the errors of inferior courts, it would be a matter of great convenience to justices, as well as to poor prisoners, if some less expensive, and more summary, method of obtaining information from authority, as a matter of right, were to be adopted.

manner possible, if for *any* reason, either for the purpose of laying a case before counsel on a point of law, or for other cause, the justices in sessions find it convenient to respite sentence, or execution of it, the usual practice is to keep the session alive by adjournment till they have satisfied themselves.

piting sentence on convictions at sessions.

It requires no great stretch of sagacity to discover great possible difficulties *in*, and some reasonable objections *to*, this mode of proceeding; but it has been considered as the best which has suggested itself, short of an application to the crown, *after sentence*, for a pardon.

If an offender, convicted before justices in session, mean to apply to the crown for a pardon, either absolute or conditional, the mode is, as follows. He procures a petition to be drawn, setting forth the nature of his offence, the sentence of the court, the circumstances he means to insist upon as his claim to mercy, and concluding with a prayer to that effect. In order to render such petition successful, the chairman of the session, before which he was convicted, must indorse on this petition, at least his *approbation* of its being presented, but he is at liberty to add his *recommendation* to mercy, in such terms as he conceives the prisoner to merit it. The petition, thus sanctioned, must then be transmitted by the clerk of the peace, or town clerk, as the case may require, to the Secretary of State for the Home Department. Generally speaking, pardon almost immediately follows an application made under these circumstances. If the petition be presented, by negligence or mistake without the indorsement of the chairman, or a majority of the justices, present in session at the time of trial, it is usual to refer it back for authentication. If such confirmation be withheld, it is not usual for the Secretary of State to lay the petition before his Majesty, the necessary conclusion being, that the petitioner is not a proper object of the Royal mercy.

Method of obtaining pardons on convictions at sessions.

The expences attendant upon obtaining the King's pardon were till lately so considerable, as, in some instances, to have disabled, or at least to have deterred, necessitous convicts from applying for it, even though encouraged by

Recent statute respecting pardons and the fees due for obtaining them.

the court so to do. Wherefore a statute was recently passed, (58 Geo. 3. c. 29.) which enacts that "in future (from May 30, 1818,) no fee, gratuity, or other dues, paid or payable for, or in respect of, any grant of a pardon by his Majesty, his heirs and successors, or for, or in respect of any letters patent, charter, warrant, bill, docket, or other instrument appertaining thereto, or the transcript of any such instrument, shall be paid or payable, by, or on behalf of, the person or persons, in whose favour, or to whom, such pardon shall be granted; but that all fees which are now paid, and payable, for the granting and passing any such pardon or pardons, shall be paid by the Lords Commissioners of his Majesty's treasury of the United Kingdom of Great Britain and Ireland, in the same manner, and by the same persons, as other law expences, on behalf of his Majesty are paid.

And no such letters patent, charter, warrant, bill, docket, instrument, or transcript as aforesaid, shall be subject to, or liable to be charged with, any stamp duty, or duties whatever."

Consequences
of conditional
pardons and
transportation.

It has been observed that pardons after convictions, before courts of session of the peace, may, like those before superior tribunals, be either absolute, or conditional. Some modern statutes (*ex. gr.* the 48 Geo. 3. c. 129. respecting larceny from the person) give a power of *unlimited* transportation to the courts, and *many* of them for *very long* terms. A question therefore arose, with what evil consequences transportation, and subsequently a conditional pardon, or remission of any portion of such sentence of transportation, awarded by the governor of any country to which such convict might be sent, (and which power of remission is entrusted to such governor by his Majesty's commission, as a reward of good behaviour) would be attended. A case, arising out of a purely civil transaction, in which there was a series of special pleading to a prodigious extent, unnecessary to be further noticed here, came before the court of B. R. in Michaelmas Term, 1818. It was twice argued, and judgment given thereon at Hilary Term, 1819. So much of it, as we are concerned with in this place,

lies in a small compass, and may be collected from an epitome, or rather a brief outline, of the judgment delivered by Abbot, chief justice.

The case was said to have resolved itself into two questions. First, whether the transportation, or actual conveyance of the plaintiff, (a convict) to New South Wales, operated as a present and immediate pardon, and an immediate restoration to all civil rights.

Secondly, whether, supposing it so to operate, the attainder was properly pleadable in bar to an action founded on a personal demand *accruing after* attainder.

This was an action brought by the plaintiff as *indorsee*, against the defendant as *payee*, of a bill of exchange, bearing date 10th of July, 1809. The facts of the case were, that the plaintiff was convicted of felony at the Old Bailey in September, 1807, and received judgment of death; but received a pardon *conditioned* for his being transported to New South Wales. Before the cause of action accrued he was accordingly transported thither. At this time, viz. before the cause of action accrued, the governor of New South Wales had authority from his Majesty to remit either absolutely, or conditionally, the whole, or any part, of the term for which offenders should be transported. Before the exhibiting the bill in the present case, the governor of the colony actually remitted all the remainder of the term of transportation, and the plaintiff was at large.

The substance of the judgment, at least so far as it imparts any interest to the present subject of inquiry, was that,

First, by the word *transportation* in the 8 Geo. 3. c. 15, (the statute which first gave authority to the judges to transport convicts, *sans* clergy, who, at their recommendation, had been pardoned on condition of transportation, without loss of time) and by which statute it is said that "such transportation shall have the effect of a pardon under the great seal for such offender, as to the crime for which he or she was convicted," is meant not merely the conveying of the felon to the place of transportation, but his being so conveyed, *and* remaining there during the term for which he is ordered to be transported; and therefore a

felon attainted is not, by that statute, restored to his civil rights till after the expiration of the term for which he is ordered to be transported.

Secondly, that, by attainder, all the personal property and rights of action, in respect of property accruing to the party attainted, either *before*, or *after*, attainder, are vested in the crown *without office found*, and therefore attainder may be well pleaded in bar to an action on a bill of exchange indorsed to the plaintiff after his attainder.*

Pardons acquit
of all penalties
and forfeitures.

Subject to the interpretation which the foregoing case imposes on us respecting transportation and its consequences, it may be laid down, in general terms, that the effect of pardon, like that of the allowance of clergy, is not merely to prevent the effect of the punishment denounced by the sentence, but to give the defendant a new character, credit, and capacity; in the words of Blackstone, (v. 4. p. 402) "to make the offender a new man; to acquit him of all corporal penalties and forfeitures annexed to that offence for which he obtains such pardon, and not so much to restore his person, as to give him a new credit. But nothing can restore or purify the blood when once corrupted, if the pardon be not allowed *till after attainder*, but the high and transcendant power of parliament. Yet, if a person attainted receive the King's pardon, and afterwards hath a son, that son may be heir to his father, because the father being made a *new man*, might transmit new inheritable blood, though had he been born before the pardon, he could never have inherited at all."

The class of offences, and the rank of the offenders, ordinarily the subject of trial before a court of quarter session (and for cases of *extra-ordinary* interest or magnitude, other authorities will be consulted), render it unnecessary to pursue the subject of pardons much further here.

Punishments
for two
offences.

It may be sufficient, then, in conclusion, to observe, that when an offender has been sentenced to transportation for a term of years, and is afterwards tried and convicted for a distinct offence, to which a similar punishment is assigned

* Bullock v. Dodds, 2 Barn. & Ald. 258.

by law, the court may, according to its discretion, either make the two punishments concurrent, or separate and successive; or, as has been before observed, a remission of the second sentence may be obtained by a pardon from the Crown, upon petition.*

It is provided by statute,† that offenders sentenced to transportation, or pardoned on condition of *succedaneous* imprisonment, may be ordered, by any court of competent authority, to be kept to hard labour, in the gaol of the county where they were convicted, until they can be sent to the place of their destination, or even till the expiration of the term of their sentence. If any person ordered to hard labour, instead of being capitally punished, shall, during the term for which he shall be ordered to confinement, break prison, or escape from the place of confinement, or in his conveyance to such place of confinement, or from the person having the custody of such offender, he shall be guilty of felony without benefit of clergy; but in case he hath been ordered to hard labour instead of transportation, he shall be punished by an addition of three years to the term for which he, at the time of his breach of prison, or escape, was subject to be confined; and if such person, so punished by such addition to the term of confinement, shall afterwards be convicted of a second escape, or breach of prison, he shall be guilty of felony without benefit of clergy.‡ It sometimes happens, that a prisoner obtains a pardon, *after sentence* of transportation, on condition of giving security by recognizance, that he will banish himself. If he fail in the condition, he will himself indeed be guilty of no crime cognizable by the law, but the recognizances will be forfeited, and of course estreated. But another case sometimes occurs, especially at sessions, which calls for a single observation; viz. that if an offender of respectable rank, whose punishment *would be* imprisonment, if sentence were passed, and who, to avoid the ignominy, or inconvenience, of imprisonment, solicits permission, after conviction, but *before sentence*, to exchange

Offenders receiving pardons on condition of imprisonment, to be kept to hard labour.

Gratuitous transportation.

* 1 Leach, 441. 536.

† 31 Geo. 3. c. 46.

‡ Ibid.

imprisonment by sentence, for a voluntary transportation. This gratuitous commutation also (though by an augmentation of punishment in the eye of the law), is to be accomplished after the same manner; viz. by recognizance; which, being an engagement of record to the court, is considered sufficient security to warrant a sentence of nominal fine, and a delivery of the offender to his sureties.

Estreats of
recognizances.

What has been just advanced respecting these recognizances in open court (operating to a certain degree, like conditional pardons, as commutations of punishment), brings us, by a sort of consecutive transition, to a brief consideration of the Estreats of recognizances, being one of the matters of which this chapter professes to treat, as arising out of the termination of the court's authority.

Recognizances, as has been more than once observed, being only the means pointed out by the law to secure the performance of certain conditions imposed by it, the Estreat of those recognizances is the consequence of the failure of those conditions. Any breach, therefore, of them, *while the court continues sitting*, can only be considered, as it were, *incipient*; to be completed and confirmed by a continuance of default, or to be superseded and avoided by compliance before the expiration of the session. So that, though the moment a recognizance is taken it becomes a record, yet it is every day's practice, and has always been uniformly so, upon the party bound by recognizance *to appear in court*, or to do any other act imposed by the conditions, on exhibiting a satisfactory affidavit of any sufficient reason for his non-compliance with the terms, for the court, on motion being made for that purpose, to *take off* (as it is termed) the Estreat in that particular instance. Supposing the authority of the court to have been thus exercised, what is to follow must depend on the circumstances of each particular case. If appearance in court were the only object to be attained, that appearance may be attended with *all* the consequences in contemplation; or a respite of the question to be discussed may be granted by the same authority which has superseded the Estreat; or a new recognizance may be

required in open court; or, lastly, if the affidavit be insufficient to procure these consequences, the Estreat will be confirmed.

After the session has expired, the clerk of the peace, or town clerk, (as the case is,) makes out a proper Estreat, or list of the forfeitures incurred, and the fines inflicted while the session continued; and he is directed by statute* to deliver a perfect Estreat, or schedule of all fines, issues, amerciaments, and other forfeitures whatever, to the sheriff before Michaelmas, and a duplicate into the court of Exchequer by the second Monday after the morrow of All Souls, under not only a heavy pecuniary penalty, but a liability of being discharged from office, and further disabilities.† With the ulterior proceedings, after the sum forfeited has become a debt due to the King, the sessions have no concern, nor can we have any here. The court of Exchequer issues process to compel payment, through the medium of the sheriff, and, therefore, to that court alone belongs the cognizance of all applications.

The last subject to be touched upon is appertaining, though somewhat remotely, to the conclusion of the justices' authority in sessions,—that of Restitution of goods stolen to the right owner, after the conviction of the offenders.

The person from whom goods were stolen had formerly three methods whereby to procure Restitution: 1st. by appeal of robbery; 2dly. by a statute 21 Hen. 8. c. 11. which introduced a new law, in the words following:

“ If any felon do rob, or take away any money, goods, or chattels from the King's subjects, from their persons or otherwise, within this realm, and thereof be indicted and arraigned, or found guilty, or otherwise attainted, by reason of evidence given by the party robbed, or owner of the money or goods, or by any other by their procurement: then the party robbed, or owner of the money or goods, shall be restored to such his money or goods; and as well the justices of gaol delivery as *other justices* before whom the felon shall be found guilty or otherwise attainted, may

* 22 & 23 Car. 2. c. 22.

† 4 & 5 Wm. & Mar. c. 24. and 3 Geo. 1. c. 15.

award a writ of Restitution, in like manner as if the felon were attainted on appeal."

3dly. By common law.* But there does not appear to have been any writ of Restitution awarded for above two hundred years past; for it is now usual for the court, upon the conviction of a felon, to order (without any writ) immediate Restitution of such goods as are brought into court, to be made to the several prosecutors. † Indeed, without any writ of Restitution, or even order, the party may *retake* his goods *wherever* he happens to find them, so as it be not in a riotous manner, or attended with a breach of the peace, because he hath pursued the law upon the felon, and may have his writ of Restitution upon demand.

Besides, the owner may have this only opportunity of doing himself justice; for his goods might be afterwards conveyed away or destroyed, if he had no speedier remedy than the ordinary process of the law: if, therefore, he can so contrive it as to gain possession of property again, without force or terror, the law favours, and will justify his proceeding. ‡

Likewise, if the felon be convicted and pardoned, or be allowed his clergy, the party may bring his action of trover for the goods, and recover a satisfaction in damages; but that is a consideration beside our purpose here.

If it shall appear to the court, that the party hath been guilty of a gross neglect in prosecuting, it seems that, in such case, he shall not be entitled to restitution by any authority of the court. §

And where goods have been obtained from another by mere fraud, the court have no power to award Restitution on conviction of the offender, as in cases of felony. ||

* 1 Hale, 538.

† Loffis. R. 88.—4 Black. Com. 363.

‡ 3 Black. Com. 4.

§ 2 Hawk. c. 23. || 2 E. P. C. c. 18.

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